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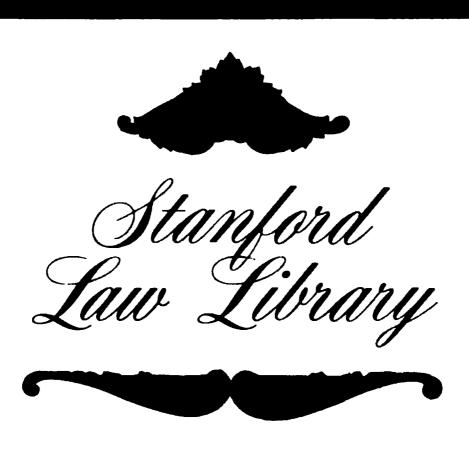
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THE

LAW AND PRACTICE

RELATING TO

LANDLORDS AND TENANTS:

Comprising

THE MOST APPROVED MODERN PRECEDENTS,

ALPHABETICALLY ARRANGED UNDER DISTINCT AND SEPARATE HEADS, WITH NOTES, ILLUSTRATIONS, AND CASES; TO WHICH IS PREPIXED A CONCISE TREATISE ON THE NATURE OF ESTATES IN GENERAL, IN ACCORDANCE WITH THE RECENT STATUTES RELATING TO REAL PROPERTY; TO WHICH IS ADDED A TABLE OF THE CITED CASES, WITH A COPIOUS INDEX TO THE ENTIRE WORK.

THE WHOLE

ADAPTED FOR THE USE OF ATTORNEYS AND SOLICITORS, ALSO LANDLORDS, TENANTS, FARMERS, STEWARDS, AGENTS, AND OTHERS CONCERNED IN THE MANAGEMENT, SALE, OR LETTING OF ESTATES.

BY R. SHIPMAN, ESQ.,

Editor of "Jones's Attorney's Pocket Book," and author of "The Attorney's New Pocket Book, Notary's Manual, and Conveyancer's Assistant."

SECOND EDITION.

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GEORGE ROUTLEDGE,
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MDCCCXLI.

ENTERED AT STATIONERS' HALL.

ADVERTISEMENT.

This Work (which, for the purpose of condensation and utility, is printed in a small yet legible type) comprises everything of ordinary occurrence relating to the law and practice of Landlords and Tenants.

The precedents (upwards of two hundred, taken from modern settled drafts of actual practice) are arranged under distinct and separate heads, with foot-notes, side-notes, and observations; to which are added upwards of one thousand one hundred of the latest decided cases.

The whole work (now completed) has been executed upon an alphabetical plan, with a view of assisting the practitioner in the dispatch of general business, and it is anticipated that the same will be found a useful resort in the office of the attorney, solicitor, and conveyancer.

April, 1841.

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CONTENTS TO PART I.

LANDLORD AND TENANT.

DEFINITION of Landlord and Tenant	•	•	Page 1
ESTATES	8 .		•
On the Nature of Estates in general	•	•	1—15
AFFIDAVI'	TS,		
Common Form of Affidavit of Service	ce of Do	eclaration	
Ejectment	•		. 16
Affidavit of Service on several Demi	ises whe	re there	are
several Tenants	•	•	. 17
———— Service on the Wife		•	. 18
on one Tenant, ar	nd Wife	of another	ib.
when on any other			19
on Statute 4 G.			
being untenanted .	 , 0	, 110m	ib.
Affidavit required by the Act 1 G. IV.,	. 97 e 1	in Addit	
to the usual Affidavit of Service of			
		mon in Ele	
ment, to ground the Motion for			·. 21
of the due taking of the Rec	cogmzan	ce, under	
Act 1 G. IV., c. 87.	. •	•	. 23
of Justification by the Suret		•	. io.
to move for Judgment in	Ejectmei	it, under	
Statute 1 W. IV., c. 70	•	•	. 24
for Rule for Judgment, on P		ıgs in Eje	ect-
ment on a vacant Possession	•	•	. 25
of the due Execution of a Sul	bmission	to Arbitra	ation 26
of the Service of a consent R	ule, with	an Alloca	tur,
and of demanding Costs	•	•	. 27
- of due Execution of Deeds	•	•	. 28
. 2		_	· ·

AGREEMENTS.

On Agreements generally	Page 29—32
Agreement for letting Lodgings.	
On the Nature of Agreements for letting Lodgings	3334
Form of an Agreement for letting unfurnished Lodg	
Agreement for letting and taking Apartments fo	
Week, and from thenceforth from Week to Wee	k ib.
Agreement for letting Apartments for one Year	36
for furnished Lodgings	. 37
Another Form, with Inventory	. 38
A general Form of Agreement for letting Lodgings	. 39
AGREEMENT FOR LEASES.	
On the Nature of Agreements for Leases .	41—43
Cases where Agreements were or were not held to	consti-
tute a Lease	44—48
The Plan of preparing executory Agreements .	. 49
Plan of an Agreement for a Lease	. <i>ib</i> .
Form of an Agreement for the Lease of a House	. 50
Another Form, including the Use of Furniture	; 52
Agreement for a Lease, with Stipulations as to Taxo	
ground Rent	. 53
An Agreement for the Lease of Part of a House	. 54
Agreement for the Lease of a House, with particul	
pulations	. 56 . 57
Miscellaneous Forms	. 61
Agreement for letting a small Farm from Year to Y	
for letting a Mill and Premises, cont	
Stipulations as to the Management	
Mill, Machinery, and Lands .	. 65
An Agreement with Conditions for letting a Farm on	
from Year to Year	. 69
Agreement by a Lessee for letting a Farm to an	Under-
tenant · · · ·	. 77
Conditions for the Lease of Mines	. 79
A short Form of Agreement, with Conditions for le	tting a
Farm	. 85
Agreement upon engaging a Bailiff or Steward for a	nanag-
ing Farms	. 87

Agreement with timber Merchants for the Sale of timber Trees, containing particular Stipulations as to falling	
the same on the Farm and Lands on which they are	
	age 88
Agreement between Mortgagee and Mortgagor, for grant-	-
ing building, repairing, and improving Leases .	93
Agreement for building a House and Premises .	95
with Conditions for a building Lease .	98
Building Agreement, and to grant a Lease when Houses	
are erected by Way of Underlease	100
Another Form of a building Agreement	104
An Agreement for building a Row of Houses	107
for a Partition of leasehold Premises .	111
for an Exchange of leasehold Premises	113
Agreement of Landlord to build up Premises destroyed by	
Fire	114
Form of an Agreement for Purchase, whether freehold,	
copyhold, or leasehold	116
An Agreement for an Assignment of a Lease for Lives	120
Agreement or Contract for letting a Dairy	122
	7—134
APPORTIONMENT OF RENT.	
	5—139
Deed of Apportionment of Rents of leasehold Property	
between two Purchasers	140
Declaration as to Apportionment of Rents, Fines, &c., to	
be paid by the respective Assignees	144
Declaration and Consent as to Apportionment of Rents	145
Declaration that the Residue of Leaseholds remaining	
unsold, shall be subject to the entire Rent	. ib.
Consent and Direction that a Rent-charge shall henceforth	
be payable out of Part only of the Lands charged	
therewith .	146
	7—150
ASSIGNMENTS.	
On Assignments 15	1154
Assignment of a Lease for the Residue of a Term of 21	
Years	154
An Assignment of a Lease for 21 Years, (by Indorsement,))
from the personal Representative of the Lessee, in	
which the Lessor joins as a consenting Party	157

deceased, to Trustees, in Trust for their mutual Benefit Assignment of a Lease and Policy of Insurance Miscellaneous Forms Assignment of a Lease for 21 Years (sold by Auction) of Leaseholds for Lives from a Landlord to a Tenant in Possession of leasehold Premises in Trust to sell, and for dividing of the consideration Money among Parties in Dispute, pursuant to an Award to be made by an Arbitrator of a Contract for the Sale of a Lease of leasehold Property from old Trustees resigning, to new Trustees appointed in their stead of Leaseholds under a Fiat in Bankruptcy of a Policy of Insurance Observations and Cases 194—19 ATTORNMENT. Signification of Form of Attornment in an Action of Ejectment to save the Expense of executing a Writ of Possession Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards On Awards Form of Award between Landlord and Tenant Awards On Awards	Assignment of a Lease with household Goods, from an	
Assignment of a Lease and Policy of Insurance Miscellaneous Forms Assignment of a Lease for 21 Years (sold by Auction) of Leaseholds for Lives from a Landlord to a Tenant in Possession of leasehold Premises in Trust to sell, and for dividing of the consideration Money among Parties in Dispute, pursuant to an Award to be made by an Arbitrator of a Contract for the Sale of a Lease of leasehold Property from old Trustees resigning, to new Trustees appointed in their stead of Leaseholds under a Fiat in Bankruptcy for a Policy of Insurance Observations and Cases 194—19 ATTORNMENT. Signification of Form of Attornment in an Action of Ejectment to save the Expense of executing a Writ of Possession after Judgment in Ejectment Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. On Awards	Administrator and others the next of Kin of the	
Assignment of a Lease and Policy of Insurance Miscellaneous Forms Assignment of a Lease for 21 Years (sold by Auction) of Leaseholds for Lives from a Landlord to a Tenant in Possession of leasehold Premises in Trust to sell, and for dividing of the consideration Money among Parties in Dispute, pursuant to an Award to be made by an Arbitrator of a Contract for the Sale of a Lease of leasehold Property from old Trustees resigning, to new Trustees appointed in their stead of Leaseholds under a Fiat in Bankruptcy for a Policy of Insurance Observations and Cases 194—19 ATTORNMENT. Signification of Form of Attornment in an Action of Ejectment to save the Expense of executing a Writ of Possession after Judgment in Ejectment Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. On Awards	deceased, to Trustees, in Trust for their mutual	
Miscellaneous Forms Assignment of a Lease for 21 Years (sold by Auction) of Leaseholds for Lives from a Landlord to a Tenant in Possession of leasehold Premises in Trust to sell, and for dividing of the consideration Money among Parties in Dispute, pursuant to an Award to be made by an Arbitrator of a Contract for the Sale of a Lease of leasehold Property from old Trustees resigning, to new Trustees appointed in their stead of Leaseholds under a Fiat in Bankruptcy of a Policy of Insurance Observations and Cases 194—19 ATTORNMENT. Signification of Form of Attornment in an Action of Ejectment to save the Expense of executing a Writ of Possession Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. On Awards	Benefit	
Assignment of a Lease for 21 Years (sold by Auction) of Leaseholds for Lives from a Landlord to a Tenant in Possession of leasehold Premises in Trust to sell, and for dividing of the consideration Money among Parties in Dispute, pursuant to an Award to be made by an Arbitrator of a Contract for the Sale of a Lease of leasehold Property from old Trustees resigning, to new Trustees appointed in their stead of Leaseholds under a Fiat in Bankruptcy of a Policy of Insurance Observations and Cases ATTORNMENT. Signification of Form of Attornment in an Action of Ejectment to save the Expense of executing a Writ of Possession Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgage, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. On Awards On Awards	Assignment of a Lease and Policy of Insurance .	163
of Leaseholds for Lives from a Landlord to a Tenant in Possession of leasehold Premises in Trust to sell, and for dividing of the consideration Money among Parties in Dispute, pursuant to an Award to be made by an Arbitrator of a Contract for the Sale of a Lease of leasehold Property from old Trustees resigning, to new Trustees appointed in their stead of Leaseholds under a Fiat in Bankruptcy for a Policy of Insurance Observations and Cases ATTORNMENT Signification of Form of Attornment in an Action of Ejectment to save the Expense of executing a Writ of Possession Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards On Awards Awards On Awards On Awards Awards On Awards On Awards Awards On Awards	Miscellaneous Forms	169
Tenant in Possession of leasehold Premises in Trust to sell, and for dividing of the consideration Money among Parties in Dispute, pursuant to an Award to be made by an Arbitrator of a Contract for the Sale of a Lease of leasehold Property from old Trustees resigning, to new Trustees appointed in their stead of Leaseholds under a Fiat in Bankruptcy of a Policy of Insurance Observations and Cases 194—19 ATTORNMENT. Signification of Form of Attornment in an Action of Ejectment to save the Expense of executing a Writ of Possession Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards On Awards Awards On Awards On Awards On Awards On Awards On Awards Awards On Awards	Assignment of a Lease for 21 Years (sold by Auction) .	ib.
of leasehold Premises in Trust to sell, and for dividing of the consideration Money among Parties in Dispute, pursuant to an Award to be made by an Arbitrator		
dividing of the consideration Money among Parties in Dispute, pursuant to an Award to be made by an Arbitrator of a Contract for the Sale of a Lease of leasehold Property from old Trustees resigning, to new Trustees appointed in their stead of Leaseholds under a Fiat in Bankruptcy of a Policy of Insurance Observations and Cases 194—19 ATTORNMENT. Signification of Form of Attornment in an Action of Ejectment to save the Expense of executing a Writ of Possession Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagur Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. On Awards		171
Parties in Dispute, pursuant to an Award to be made by an Arbitrator ———————————————————————————————————		
be made by an Arbitrator of a Contract for the Sale of a Lease of leasehold Property from old Trustees resigning, to new Trustees appointed in their stead of Leaseholds under a Fiat in Bankruptcy of a Policy of Insurance Observations and Cases 194—19 ATTORNMENT. Signification of Form of Attornment in an Action of Ejectment to save the Expense of executing a Writ of Possession Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagur Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards On Awards		
of a Contract for the Sale of a Lease of leasehold Property from old Trustees resigning, to new Trustees appointed in their stead of Leaseholds under a Fiat in Bankruptcy of a Policy of Insurance Observations and Cases ATTORNMENT. Signification of Form of Attornment in an Action of Ejectment to save the Expense of executing a Writ of Possession Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards On Awards		
of leasehold Property from old Trustees resigning, to new Trustees appointed in their stead of Leaseholds under a Fiat in Bankruptcy of a Policy of Insurance Observations and Cases 194—19 ATTORNMENT. Signification of Expense of executing a Writ of Possession Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagur Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards On Awards AWARDS.		- · -
ing, to new Trustees appointed in their stead of Leaseholds under a Fiat in Bankruptcy of a Policy of Insurance Observations and Cases ATTORNMENT. Signification of Expense of executing a Writ of Possession Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagur Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. On Awards		178
Observations and Cases ATTORNMENT. Signification of Expense of executing a Writ of Possession 20 Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor 20 Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor 20 Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit 20 Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. On Awards Form of Award between Landlord and Tenant Ward pursuant to Articles contained in a building Agree-		
Observations and Cases ATTORNMENT. Signification of		180
ATTORNMENT. Signification of		187
ATTORNMENT. Signification of		191
Signification of Form of Attornment in an Action of Ejectment to save the Expense of executing a Writ of Possession Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. On Awards Form of Award between Landlord and Tenant Form of Award between Landlord and Tenant Awards 207—20 207—20 Awards Porm of Award between Landlord and Tenant	Observations and Cases 19-	1—199
Signification of Form of Attornment in an Action of Ejectment to save the Expense of executing a Writ of Possession Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. On Awards Form of Award between Landlord and Tenant Form of Award between Landlord and Tenant Awards 207—20 207—20 Awards Porm of Award between Landlord and Tenant		
Form of Attornment in an Action of Ejectment to save the Expense of executing a Writ of Possession Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards On Awards Awards On Awards	ATTORNMENT.	
Form of Attornment in an Action of Ejectment to save the Expense of executing a Writ of Possession Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards On Awards Awards On Awards	atif action of	000
Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment . 20 Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor 20 Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit . 20 Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards		200
Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards On Awards Awards On Awards On Awards Awards On Awards	Form of Attornment in an Action of Ejectment to save the	201
Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards AWARDS. 207—20 Awards Porm of Award between Landlord and Tenant Form of Award between Landlord and Tenant Awards 207—20 Awards 207—20	Expense of executing a writ of Possession .	
Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought by a Mortgagor Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. AWARDS. On Awards AWARDS.	Anomer Form by Tenants was mortgagee or other Person	
Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards Awards On Awards Awards On Awards Awards On Awards On Awards Awards On Awards On Awards Awards On Awards	after Judgment in Ejectment	202
Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards On Awards	Another Form of Attornment by Tenant to the Lessor of	
of the Mortgagor without Suit Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards On Awards	the Flamuli in Ejeculient brought by a Mortgagor	203
Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards On Awards On Awards On Awards On Awards On Awards Awards On Awards	Aftornment by Tenants to the Mortgagee, by the Direction	
of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards On Awards	of the mortgagor without built .	204
is appointed in the Deed (indorsed upon the Security) Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards On Awards On Awards On Award between Landlord and Tenant Form of Award between Landlord and Tenant Award pursuant to Articles contained in a building Agree-	Memorandum of Attornment by a Mortgagor in Possession	ı
Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards On Awards On Award between Landlord and Tenant Form of Award between Landlord and Tenant Award pursuant to Articles contained in a building Agree-	of leasenoid i temises wa mortgagee, where a receiver	
Direction by Assignees of a Mortgagor under a Fiat in Bankruptcy, to Tenants to attorn to the Mortgagee (by Indorsement on the Deed or Security) AWARDS. Awards On Awards Form of Award between Landlord and Tenant Form of pursuant to Articles contained in a building Agree-	ī	
Awards On Awards Form of Award between Landlord and Tenant Form of pursuant to Articles contained in a building Agree-	curity,	. <i>ib</i> .
AWARDS. Awards On Awards On Award between Landlord and Tenant Form of Award between Landlord and Tenant Award pursuant to Articles contained in a building Agree-	Direction by resignees of a mortgagor under a rist in	,
AWARDS. On Awards On Awards Form of Award between Landlord and Tenant 207—20 Form of Award between Landlord and Tenant 21 Award pursuant to Articles contained in a building Agree-	Danki upos, so rename to attorn to the mortgagee (by	
On Awards On Awards Form of Award between Landlord and Tenant 207—20 Form of Award between Landlord and Tenant 21 Award pursuant to Articles contained in a building Agree-	Induscment on the Deed of Security) .	205
On Awards On Awards Form of Award between Landlord and Tenant 207—20 Form of Award between Landlord and Tenant 21 Award pursuant to Articles contained in a building Agree-	AWADDQ	
Form pursuant to Articles contained in a building Agree-	- · · - •	
Form pursuant to Articles contained in a building Agree-	Awards . 20	7-209
A Walter	of Award between Landlord and Tenant	
ment 2: Tyations and Cases 215—2	ALICE	
Tyations and Cases	ment	. 213
Market 1	Precivations and Cases . 21	5-217

BARGAIN AND SALE.

On Bargain and Sale	217
to cut down and carry away the same	218
Bargain and Sale of Goods, and of a verbal Agreement for the Lease of the House in which the same are in and	
about	220
Bargain and Sale of copyhold Property under a Fiat in	000
Bankruptcy	222
BILL OF SALE.	
The Nature of	226
faction of Rent, to save the Expense of Distress	227
Bill of Sale of Goods distrained for Rent, from Landlord and Person making the Distress, with the Constable	241
and Appraisers, to a Purchaser at the Valuation fixed	229
Bill of Sale of household Goods and Furniture from Te-	
nant to Landlord, by Way of Security for Rent and	
Money due and owing, including a Power of Attorney for delivering Possession of Goods	091
Observations and Cases	231 234
	201
BONDS.	
The Nature of a Bond	236
Form of replevin Bond	237
Bond as a Security to a Landlord by Tenant, and his	
Surety for Payment of Rent reserved in granting a	
Lease	238
of Indemnity upon the Assignment of long Lease- holds, to save the Lessee or Assignee harmless from	•
the Payment of the Rent, and Performance of the	
Covenants in the original Lease	240
to indemnify an Underlessee from ground Rent	242
as an Indemnity against a Defect in the Title of	
leasehold Premises	24 3
of Indemnity to a Person permitting his Name to be	245
made Use of in an ejectment Suit of Indemnity by a Landlord to a Tenant upon his	44 0
agreeing to pay the Rent as usual, where the Title to	
the Premises is in Litigation	247

Bond of Indemnity to a Landlord by a Receiver appointed	
	248
Bond of Indemnity to a Purchaser of leasehold Premises,	
providing against Losses occasioned by one of the	
mesne Assignments being missing	250
Bond of Indemnity upon the Sale of Part of leasehold	200
Premises, to indemnify the Assignee from Payment of	
	081
any Part of the Rent reserved by the original Lease	251
— as a collateral Security for the Performance of a Con-	252
tract or Conditions for the Sale of Timber .	252
—— for securing Money given with a Deposit of a Lease	
and the Assignments thereof as an equitable Security	253
Arbitration Bonds between Landlord and Tenant .	254
Bond by a Tenant to a Landlord for delivering up Posses-	
sion of Premises, and Payment of a Sum of Money on	
being released from his Contract for a Lease .	257
Observations and Cases 258-	-263
CONDITIONS OF SALE.	
CONDITIONS OF SALE.	
Conditions of Sale of leasehold Property	264
of Sale of a fee farm Rent	266
for the Sale of Timber	
	267
for letting Premises on Lease	269
of Sale pursuant to an Order of the High	
Court of Chancery	271
A general Form of Conditions of Sale	272
Observations and Cases	277
Memorandum of Sale to be signed by Vendor .	280
to be signed by Purchaser	ib.
A short Form	ib.
Notice of Appointment of a reserved Bidder .	281
Notice of Acceptance by a reserved Bidder	ib.
Cases as to Memorandums signed on Particulars and Con-	•
ditions	282
diameter	202
COVENANTS.	
Covenant by several, each for himself alone	284
By two, jointly and severally	ib.
By three or more severally as to their own Acts, and Acts of	
Wife	ib.
By joint Tenants	285
By two entitled in undivided Moieties	ib.
Common Form by Husband for himself and Wife .	286
By two, as to their distinct Interest	ib.

Short Form of Covenant in an Assignment of Lease, is cluding the usual Covenant by Assignee for Payme of the Rent, and the usual Indemnity against the	ent	
· · · · · · · · · · · · · · · · · · ·	Page	286
Covenant by an Assignee to perform Covenants in		
original Lease, (except the Covenant for Payment	of	
	OI	OGO
Rent,) and to indemnify Assignor		289
Covenant by Landlord to repair Walls, Roof, and outsi	ae	
of Premises		290
Covenant for Lessor to enter and view the State and Cone		
tion of Premises, on one Day's Notice being give	'n,	
and for Tenant to repair on such Notice .	•	ib.
Short Covenant in a Lease to insure Buildings against F	'ire	291
For Abatement of Rent in Case of Fire, according to t		
Nature and Extent of the Damage .		292
Covenant for a Lessor to affix a Notice to let and show Pr	· •	~~
mises during the last six Months of the Term		294
Covenant to observe the Conditions contained in a form	•	407
Lease between the same Parties, as if they had be	en	••
repeated in the present .	•	ib.
Covenant of Indemnity against fee farm Rents, with t	he	
Grant of a Power of Distress	•	295
Covenant by Lessee of a public House, not to convert t	he	
same into a private House, and for the Manageme	nt	
thereof	•	296
Covenant in an Assignment of Lease to indemnify Assign	tee	-
from Evictions on Account of Breaches of Covena		
in Lease		ib.
	• •	297
Covenant not to erect Buildings against part of Premise	io A	ib.
not to erect a Mill to deteriorate one conveye		10.
Deed of Covenant by Way of Indenture of Apprentic	æ-	000
ship to a Farmer and Grazier		298
Another Form to a Farmer in Husbandry, where the A	.p-	
prentice binds himself	•	300
Deed of Covenant for the Production of a Lease	•	303
Observations and Cases	306	-316
DISTRESS FOR RENT.		
How the Power of Distress was originally given	_	317
Statutes relating to Distress arranged under the Heads	to	0.,
	317	205
De d' 1 Directions for making a Distance	325-	
Practical Directions for making a Distress .	328-	
Forms in taking a Distress for Rent	•	332
Landlord's Authority to Broker		ib.

Inventory of the Goods and Cha	attels distra	ined	Page	333
Notice of taking the Distress t	o be under	r-written	or an-	
nexed	•	•	•	ib.
Distress on growing Crops	•	•	•	334
for an Annuity or rent	Charge	•	•	335
Memorandum of Appraisement	t to be wri	tten on tl	ie In-	
ventory, and signed by Cor	nstable	•	•	ib.
Appraisement by Valuers .	•	•	•	336
Tenant's Consent for Bailiff co	ontinuing i	n Possessi	on be-	
yond the limited Time		•	•	337
	•	•	•	ib.
Replevying Distress Observations and Cases	•	•	340-	-360

CORRIGENDA.

Page	e 13, add at the end of line 10, of note (e), in a parenthesis, "(this writ of par-
	tition is now abolished by 3 and 4 W. IV., c. 27)."
	18, note (w), line 2 from bottom, add after the word essoign, in a parenthesis,
	"(now the first day of term)."
	25, line 5, for C. D., read "G. H.;" and line 28, for G. H, read "L. M."
	. 26, line 1, for C. D., read "G. H.;" and lines 12 and 16, for E. F., read "J. K."
	30, line 13, after the word contract, insert the word "if."
	49, add at the end of line 19, "to year."
	93, note (k), line 7, for "mortgagee," read "mortgagor."

CONTENTS TO PART II.

EJECTMENT.

THE Nature of the action of Ejectment and mode of Pi	-01	
_ ceeding Page	3 61-	-373
Forms of Declarations in Ejectment	374-	-383
As to the Service of Declarations in Ejectment, with d	le-	
cided cases		-403
Cognovit in Ejectment	404-	-405
Warrant of Attorney in Ejectment		ib.
Observations and Cases on Ejectment between Landlo	rd	
		-417
As to the Stat. 1 & 2 Vic., c. 72, to facilitate the Recover	ry	
of Possession of Tenements, after due determinati		
of the Tenancy	•	418
Notice of Owner's Intention to apply to Justices to	re-	
cover Possession under the Act .	•	422
Complaint before two Justices	•	423
Warrant to Peace Officers to take and give Possession		424
	424-	-432
Miscellaneous Observations and Cases on the Action	of	
Ejectment generally	432-	-43 9
EXCEPTIONS IN LEASES.		
General Form of Exceptions in a Farming Lease		440
Another Form	•	443
Exceptions of Timber in a Lease		445
Exception of Timber also of a Carriage and drift Way	•	446
Another Form of Exception of Timber .	•	ib.
Exception of Woods, Trees, and Coppices .	•	447
of Mines	•	ib.
Exceptions in a mining Lease	•	448
Exception of a Parcel of Land and Timber .	•	449
of a Right of Way	•	ib.
Two other Forms	•	450
Observations and Cases on Exceptions	451	453

GRANTS.

Grant of a Right of Way Page	454
—— of a Right of Way, in consideration of the Ex-	
tinguishment of another Road or Way	455
on the Sale of a Fee Farm Rent	457
—— of a Pew in a Church	459
Observations and Cases on Grants	-467
HABENDUMS IN LEASES.	
Common Form of an Habendum	468
Habendum in the Lease of a water corn Mill and Land	ib.
in a Lease of Mines	469
in an Underlease	ib.
in an Assignment of Underlease .	ib.
in a Demise for securing Annuity .	470
in an Assignment of Lease and Stock in Trade,	
with Consent of original Lessor (an additional	
Rent being reserved)	ib.
in an Assignment by a Tenant of several Houses	
at an entire Rent of one House freed from the	
Rent	471
Habendums in an Assignment of Leaseholds for the	
Residue of two several Terms	472
Habendum in an Assignment of Leaseholds, with right of	
Renewal	ib.
in a Mortgage of Leases and Policy of	
Assurance	473
in a Lease of a Cottage (part of a Waste) from	
the Lord of the Manor and Churchwardens of	
the Parish, on the Part of the Freeholders,	
subject to Restriction from taking Appren-	
tices, &c.	474
———— in a Demise of a Remainder for Life expectant	
upon an Estate for life	475
Special Form of Habendum, so that a Person may have	
a Reversion in each of several Leases	ib.
Observations and Cases	477
LEASES.	
On Leases	485
Lease in Proceedings in Ejectment on a vacant Possession	1 65
A general Precedent for Leases of Houses	486
Lease of a Farm and Lands	502
ANGROVI G A GALLE GALLA LIGALIAN	002

Miscellaneous Forms Page	517
Indorsement on a Lease as a Continuation of same .	ib.
Lease for a further Term, by Indorsement on the original	
Lease	518
A short Form of a Lease containing the common and	
usual Covenants	520
Lease of a Shop and Warehouse, part of a dwelling	4 _
House	523
—— of a water corn Mill and Premises, by Husband	
and Wife under a general Power of Appointment	52 6
A concise Form of a Lease of a House for twenty-one	
Years, without Restriction as to Assignment, with a	
Covenant for granting a further Term at the Expira-	
tion of the Lease, upon six Months' prior Notice, and	
with a Proviso for making void the Lease, in Case of	
the Death of the Lessor	528
Lease of a public House from Husband and Wife, in	
which a Surety joins with the Lessee for Payment of	
Rent, &c	534
—— of a Wife's settled Estate for life, in pursuance of	
a Power reserved to her in her marriage Settle-	
ment, where the Husband joins as a consenting	
Party	540
from Husband and Wife for ninety-nine Years,	
determinable on the Death of the Wife, she being	
Tenant for life only	544
—— of a Farm and Lands from a Widow, by virtue of	
a Power under her marriage Settlement .	546
of a small Farm and Lands (Part freehold, Part	
copyhold)	552
of several Closes of Land for Fifty Years,	
during the joint Lives of Lessor and Lessee, with	
separate Habendums as to different Parts of the	
Premises, in Respect to the Commencement thereof	557
—— from a Person seised as Tenant in Tail	561
from Tenant for life, and the Person entitled in	
Remainder	562
—— of a Royalty of hunting, hawking, fishing, and	
fowling, appertaining to a Manor	565
from a lord of a Manor of a Fishery, also of	
hunting and hawking, with an Appointment as	
Keeper of the Game	567
from Tenants in common	568
from Mortgagor and Mortgagee	570
from a Mortgagee having a Power of leasing in	
the mortgage Deed, containing a Covenant by	

Lessee as to rep	airing pa	irty Walls	s, and for	In-	
surance .	•	•	•	Page	2 574
Lease of a House and St	able for t	wenty-one	Years, with	th a	
Proviso for the De			<u> </u>		
House at one Perio	d, and th	he Stable	at anothe	r. at	
the Option of the I					
that Purpose					579
Underlease, with Provision	ons as to i	ndemnifyi	ng the Les	.see.	
and as to Renewal					581
Renewed Lease for Lives		•	•	•	586
A Lease of different Prem	_	wo senarat	e Terms.	with	000
different Habendur					
accordingly; with a					
surrender up the Pr					
Term, on Notice	CIII-1505 W		1 01100 01	the	591
Lease of Land for building	·	•	•	•	593
Building Lease .	- R	•	•	•	596
Another Form .	•	•	•	•	
Lease of Mines of Ore	•	•	•	•	599
——— coal Mines	•	•	•	•	601
	on Toogo	•	•	200	606
Observations and Cases			· miona		-64 6
Tables of the Value of L	easenoids	and vess	rsions	047-	-649
LETTER					
Letter of Attorney to er Ejectment) .	iter on a	vacant l	Possession	(in	650
Letter of Attorney to de	mand an	d receive	Rents, and	i in	000
Default of Payment					651
Another Form .	-		, 110010110	•	ib.
Letter of Attorney to dist	rain for F	Rent	<u>•</u>	•	654
Letter of Attorney to de			in Defaul	t of	001
Payment to re-enter,		•			
in the Lease.	, parsaum	C 60 & 110	TEO COLLEGE	uicu	655
in the bease.	•	•	•	•	000
LICENSES TO	DEM	ISE AN	D ASSIG	N.	
License from Landlord to	assign t	o a particu	ılar Person	a .	656
tu	Tenant	to exercise	a Trade	• •	657
Observations and Cases	•	•	•	659-	-662
37.A.m.					
, NOT.	ICES T	O QUI	Г.		
Notice by Landlord to	Tenant	to auit P	remises.	with	
Observations and Ca	ises	1		661~	-668
Another Form .	_	-	-		669

Notice by Tenant of his Intention of quitting .	Page	669
pursuant to a Proviso in a Leasc		ib.
Another Form of Notice of Tenant's Intention to quit	•	670
Forms where the Commencement of the Tenanc	y is	
uncertain	•	ib.
Notice to quit to a Tenant at Will	_	671
joint Tenants, or Tenants in Common	_	ib.
By Agent of Landlord	•	ib.
Notice from Landlord to deliver up Premises to a t	hird	•0
Person	mid	ib.
	•	ib.
A general Form of Notice to quit		10.
Another Form of Notice to Tenant to quit Possession		
Premises where the commencement of the Tenancement	3Å 18	~=~
uncertain	•	672
Notices to quit Lodgings	•	ib.
Miscellaneous Forms	•	673
To quit or pay double	•	ib.
To quit Lodgings or pay double Rent .	•	ib.
By Landlord to Tenant to repair Premises, in Pursus	ınce	
of a Covenant in the Lease made between them, of		
Default that he will re-enter pursuant to Proviso	•	674
General Notice to Repair	•	675
Notice by Surveyor of Landlord to Repair .	_	ib
Landlord to Tenant to pay Rent .	_	676
by a Mortgagee to Tenant to pay Rent to his	m in	
Satisfaction of Interest (two Forms)	111	ib
to be affixed on Premises being deserted, accor-	ding	•••
to Stat. 11 G. II., c. 19, s. 16	umg	677
Form of Demand of Demander of Demises prior to		071
Form of Demand of Possession of Premises prior to		
ceeding by Action of Ejectment under Stat. 1 G.	14.,	^ ~
c. 87	•	679
Notice by Landlord of his Intention to apply to Justice		
recover Possession of Premises pursuant to Stat.	1 &	
2 Vict., c. 72.	•	680
Notice by Landlord to a Sheriff in Possession of		
tenant's Goods under an Execution of Rent b	eing	
due	•	681
PROVISOES.		
Proviso for determining a Lease in Case of Rent being	g iu	
Arrear, or of the Lessee's assigning or underletting		
(with Observations and Cases)	682-	-685
Proviso for determining a Lease at the Option of Lea	-	
at the end of seven or fourteen Years .	y	685
Proviso between Landlord and Tenant in Case of Pren	าร์ออร์	

Proviso that Lessees shall be all answerable to the Lessor for the Rent; but as between themselves shall pay the same in certain Proportions	ge 686 687
Proviso for Trustees having the legal Estate to lease with Consent	-688
RECITALS.	
Of Agreement for perpetual Renewal of Lease. Of Renewal at the accustomed Times.	689 ib.
Of Agreement of Lessor becoming a Party for licensing Assignment.	ib.
Of renewable Lease for Lives	ib.
Of Assignment with the Cousent of Lessor	690
Of Assignment of Lease	ib.
Of mesne and ultimate Assignments	ib.
Of a License to assign	691
Of a Lease for a Term of Years	ib.
Of a Contract for Lease when the Mortgagee joins .	ib.
Of a License to demise Copyhold	692
Of a Person being entitled to Leaseholds	ib.
Another Form	ib.
RECOGNIZANCE.	
Recognizance of Bail in Ejectment	693
REDDENDUMS.	
In a Lease for Years of Rent payable quarterly .	694
In a Lease under a Power	ib.
Of an additional Rent for every Acre dug up for Bricks, &c.	697
A second Reddendum in a Lease reserving Rent for Trades carried on	ib.
In a Lease for Years, determinable on the Death of a	
Person	698
Of monthly Account for Coals landed on Premises, and rendering one eighth of same, or one eighth Part of Moneys to be produced thereby. Observations and Cases, including modes of valuing Rents of Farms, with a Table of the average value of turnip	ib.
and clay Land	0702

RELEASES.

By a Landlord to a Tens Of a Right of Entry for			it. or Cond		703
broken .				-	704
Between Landlord and	Tenant f	rom the	Performar	ice of	•••
an Agreement for a					705
From Landlord to Tenas		Inherita	nce, with	Notes	
and Variations	•	•		•	709
S	URREN	DERS.			
Surrender by Lessee of the of a Lease for				dead)	712
in order to obtain a					713
TESTATUM	CLAU	SES IN	LEAS	ES.	
Common Form (with op	erative W	ords)	•	•	715
In a farming Lease	•	•	•	•	ib.
By Virtue of an Act of P	arliament	•	•	•	ib.
of several Ac		•	•	•	716
In a Lease for Lives	•	•	•	•	ib.
Another Form upon add	ling a fre	sh Life,	ipon surre	ender	
of prior Lease	•	•	•	•	ib.
In an Underlease	•	•	•	•	717
In a Lease under a Powe	er .	•	•	•	ib.
By a Tenant for Life un	der a Pow	er .	•	•	ib.
In a repairing Lease	•	•	•	•	ib.
In a building Lease	•	•	•	•	718
From Husband and Wife	e under a	joint Pov	wer .	•	ib.
By a married Woman in	pursuan	ce of a Po	wer	•	ib.
In a mining Lease by a	Mortgage	e by virtu	ie of a Pov	ver .	719
In a mining Lease	•	•	•	•	ib.
In a Lease from Devisee	s in Trus	t .	•	•	ib.
From Husband and Wif	e of Land	s seized i	n her Rig	ht.	ib.
In a Lease of Freehold a	nd Copyl	ıold	•	•	720
In a Demise by Mortgag	for and M	ortgagee	•	•	ib.

CORRIGENDA.

TABLE OF CASES CITED.

A				1				F	'age
				1	Barry v. Nugent	•	•		313
			1	Page 226	Barton v. Fitzgerald	•		•	
Abingion (L) v. Butler Adams v. Grane Aitcheson v. Cargey Aldenburgh v. Peaple Aldridge v. Harper Alexander v. Brown Allen v. Bryan Amfield v. White Andrew v. Hancock Andrews v. Russell Angerstein v. Handson Ansell v. Evans	•	•	•	226	Baxter d, Abrahall v. Br	OMD	•	•	45
Adams v. Grane .	•	•	•	344	Bayley v. Corporation of	Leo	aniv	ster	587
Aitcheson v. Cargey	•	•	•	215	Baynes v. Smith	•	•		349
Aldenburgh v. Peaple	•	•	127,	345	Baynham v. Guy's Hosp	ital	•	587,	
Aldridge v. Harper	•	•	•	359	Beandley v. Brook	•		•	464
Alexander v. Brown	•	•	•	120	Beardmore v. Fox		•	•	108
Allen v. Bryan .	•	•	•	148	Beardmore v. Fox Beaty v. Gibbons Bevan v. Delahay	•	•	69,	646
Amfield v. White	•	•	54,	, 352	Bevan v. Delahay Beck d. Fry v. Phillips Beddington v. Southall Belfore v. Westen		•	•	345
Andrew v. Hancock	•	•	149	352	Beck d. Fry v. Phillips		•	•	161
Andrews v. Russell	•	•	•	346	Beddington v. Southall		•	•	210
Angerstein v. Handson		•	•	645	Belfour v. Weston	•	•	•	41
Ansell e. Evans .	•		•	297	Bennett v. Robins			•	341
Ansell v. Evans Antrobus v. Davidson Anworth v Johnson	•	•	. (297 359 129	v. Womack	•	147,	309,	334
Anworth v Johnson	•	•	71,	, 129	Beswick v. Swindells			•	
Appleton v. Binks	•	•	•	314	Bevan v. Brothesk		•	•	354
Appleton v. Binks v. Campbell Archer v. Hall	•	•		34	Birch v. Stevenson		•	•	469
Archer v. Hall .	•		260.	359	- v. Wright .		325.	664,	
Ardgless v. Muschamp	•	•		29 30	Bird v. Higginson .				565
Armandale e Herris	•	•		30	Dishon at Demant	•	•		356
Armit v. Breame Armstrong v. Baldock	•			215	- v. Howard	•	•	•	666
Armstrong v. Reldock	•	•		234	Bissett v. Coldwell		•		343
Arnsby v. Woodward	•	•		683	Blades v. Arundale	-	-		344
Aslin v. Parkin .	•		•	437	Bliss v. Collins	•	_		136
Astley v. Weldon		•	•	98	Blount v. Pearman	_	-		557
Att. Gen. v. Brown	•	•	•	353	Blundell v. Bretargh		•	•	119
- v. Cross .		•	_	638	Blundell v. Bretargh Boardman v. Mostyn	•	•		49
v. Davidson	•	•	•	200	Boodle v. Davis	•			217
- v. Fullerton			•		Boone v. Mitchell	•	-	•	130
- v. Griffith	•	•	•	638	Booth v. Macfarlane		-		663
v. Owen	•	•	•	638		•	•		136
Aurioff v. Mills	•			152	Botting v. Martin	_	•		151
Austen v. Howard	•	•	356.	360	Bourdillon v. Dalton	-	•		188
Avenell v. Croker				349	Bowmaker v. Moore	-	-	•	261
	•	•	,		Bowry v. Bennet	:	•	•	30
				1	Boyes v. Ayerst	•	•	•	119
В				1	Bradbury v. Wright	42	54	352,	466
_				1	Bramley v. Alt	,	·,	-	270
Bach v. Meats .				347	Brandling v. Kent	•	•	•	360
Bedkin v. Powell .	•			350	Brawley v. Wade	_	•		195
Bailey v. Bailey	•			359	Brewer d. Onslow v. Este)D)			684
- v. Lloyd	_	•	_	OHO	Brewer v. Hill .	_	•		380
Baker v. Garratt			-	356	Bridges v. Smith	•	-		341
- v. Holtpzaffell		•	•	41	Briggins v. Goode	•	•		348
- v. Townshend	-	_	-	206	Bristow v. Binns	• -	•		255
Ball v. Cullimore	•	_	-	119	Britten v. Britten	•	•		199
Banks v. Banks	-	•	•	256	Bromley v. Holder	•	•		348
Berlow v. Rhodes	-	•	•	462	Brooke v. Bridges	•	•		438
Barnes v. Lucas	-	•	•	355	— v. Noakes	•	•		348
Barnfathere. Jordan	-	-	•	197	Brown v. Crump	•	•		64:3
Barrett v. Parry	•	_	-	217	v. Shevil	•	•		34 3
· rese c. Easel	•	•	•	_		•	•	•	~ TV
				Ь					

	•••		₽')
Name of Name	Page	Craven v. Craven	P.	Page 210
Brown v. Vawser Brummell v. Macpherson	211 657,655	Craven v. Craven Crisp v. Price Croker v. Fothergill Crosby v. Tooke Wadsworth Crosier v. Tomkinson Crusoe d. Blencowe v. Bugby Cuckson v. Winter Cudlip v. Randell Curtis v. Potts	•	634
Buckle v. Taylor	329	(roker a Fothervill	•	367
Ruckley o Buckley	367	Crosby v. Tooke	•	134
Buckley v. Coles	. 465	v. Wadsworth	•	441
Buckley v. Buckley Buckley v. Coles Buckmaster v. Harrop	. 280	Crosier v. Tomkinson	•	344
Bullard v. Dyson	. 464	Crusoe d. Blencowe v. Bugby	•	660
Bullen v. Dennig	452, 503	Cuckson v. Winter	•	354
Dullan as Harrison	463, 465	Cudlip v. Randell	•	452
Bullock v. Dommitt Bulpit v. Clarke Burley v. Stephens Burnett v. Lynch Burrough v. Skinner Butcher v. Butcher Byerley v. Windus	41, 56	Curtis v. Potts	•	212
Bulpit v. Clarke	. 356	— v. Wheeler	•	340
Burley v. Stephens	. 211			
Burnett v. Lynch	. 197	n		
Burrough v. Skinner	. 2/3	\mathbf{D}		
Bucher v. Bucher .	. 400	Daffran v Goodman		30
byeriey v. windus	. 40/	Daken e Cone	•	RK3
		Dalhy n Hirst	•	645
C	1	Dale r. Gordon		359
-	l	Dann r. Spurier	54.	633
Cadogan v. Kennett	. 236	Davey v. Prendergrass		26 0
Calvert v. Gordon	. 261	Davis v. Eyton		683
v. Horsfall	. 438	v. Penton	•	98
Cadogan v. Kennett Calvert v. Gordon v. Horsfall Campbell v. Jones v. Twemlow v. Wilson Cardigan (Earl) v. Armitage Carpenter v. Cresswell	. 316	Daffran v Goodman Daken v. Cope Dalby v Hirst Dale v. Gordon Dann v. Spurrier Davey v. Prendergrass Davis v. Eyton — v. Penton — v. West Davison d. Bromley v. Stanley Deering v. Winchelsea Delver v. Barnes Denn d. Barnewell v. Barnard	•	365
v. Twemlow	. 210	Davison d. Bromley v. Stanley	•	713
v. Wilson	. 463	Deering v. Winchelsea	•	220
Cardigan (Earl) v. Armitage .	. 461	Delver v. Barnes	•	310
		Deline of the Remote Of Deline	•	629 666
Carter v. Carter	149, 349	- d. Jacklin v. Cartwright	•	
Castigan v. Hustler Cavan (Countess of) v. Doe	. ·	— d. Peters v. Hopkinson — J. Tyrrell v. I)eun	•	395
Dultuer (in error)	"· 805	- d. Warren v. Fearnside	•	635
Pultney (in error) Challoner v. Walker Chamier v. Llingon Child v. Chamberlain Church v. Brown 41, 51, 659,	259	- d. Willan v. Walker .		666
Chamier v. Llingon	437	Derby c. Taylor		•
Child v. Chamberlain	. 350	Dias v. Freeman	•	
Church v. Brown 41, 51, 659,	660, 682	Dobell v. Hutchinson		
Clark v. Calvert	. 343	Dodd v. Innes	•	316
v. Gascarth	. 343	v. Morgan	•	328
Clarke v. Cogg	. 464	Doe v. Archer	•	637
Clayton v. Blakey	. 483	- v. Badtitle	•	395
v. Burtenshaw	49,50	— v. Bateman	•	227
Clements v. Waller	. 638 . 310	— v. Brookes	•	663 637
Clifton v. Walmesley Clinan v. Cook	. 41	- v. Butcher	•	54
Clinan v. Cook	509	— v. Dixon	•	438
Cobb v. Stokes	63	— v. Maisey	•	93
Coe c. Clay	. 131	— v. Payne	431.	660
Coles v. Trecothick	. 120	— v. Porter		9
Colley v. Stretton	. 197	- v. Roberts	•	699
Collins v. Barrow	. 129	— v. Roe	371,	373
Collinson v. Lettsom	. 313	— v. Rosse	•	9
Collyer v. Sheer	. 681	- v. Spiller	•	665
Colman v. Sarel	. 226	- d. Allen v. Calvert	•	695
Concannen v. Lethbridge .	. 356	— d. Ambler v. Woodbridge.	400	683
Connor v. West	. 436	— d. Ash v. Calvert	129	668
Cook v. Booth	. 640 . 262	— d. Ashman v. Roe	•	436 359
Coope v. Tynam	710	— d. Atkins v. Roe — d. Aylesbury (L) v. Roe .	•	390
Coppin v. Fernyhough	. 713	- d. Baddam v. Roe	99	, 385
Cornish v. Searell	. 266	- d. Bailey v. Roe	-	384
Cosser v. Collinge	. 77	- d. Baker v. Wombwell .	•	669
Cowell v. Edwards	. 262	- d. Barney v. Adams .	•	-
	, 120, 128	- d. Baynton v. Walton .	•	695
Coxe r. Day	. 695	- d. Batson v. Roe	•	392
•				

TABLE OF CASES CITED,

Page 1	Page
Doe d. Bedford v. Kendrick	Doe d. Forster v. Williams . 124, 663
- d v. Knightley 666	- d. Freeman v. Bateman 683
- d. Biddle v. Abrahams 425 - d. Bingham v. Cartwright . 199	- d. Frith v. Roe
	d. George v. Ros . 389, 399, 402
— d. Blagg v. Steele 363	_ d. Gillett v. Roe 374
- d. Boscawen v. Bliss 684	- d. Godsell v. Ingliss
— d. Bradford v. Roe	d. Goodbehare v. Bevan 153 d. Goodwin v. Roe 374
- d. Brass v. Horsley 433	d. Gore v. Ross
- d. Brent v Roe	_ d. Green v. Baker . 664, 683, 685
- J. Briggs v. Roe . 385, 386	— d. Griffiths v. Lloyd 634, 696
— d. Bristow v. Old	— d. Grinies v. Roe
— d. Bromfield v. Smith 45, 634, 663	— d. Halsey v. Roe
— d. Bryan v. Bancks 683	- d. Haines v. Masters 684
- d. Brooke v. Bridges 684 - d. Brierly v. Palmer 668	— d Hammek v. Fillis 435
— d. Brierly v. Palmer 668 — d. Bryant v. Wippell 374	— d. Harcourt v. Roe
- d. Buross v. Lucas . 665, 667	d v. Roe
- d. Campbell v. Scott	- d. Harrison v. Roe . 391, 409
- d. Cardigan v. Roe 368	— d. Harrop v. Green 664
- d. Castleton v. Samuel 429 - d. Charles v. Roe	— d. Hartford v. Roe
- d. Cheney v. Batten . 351, 668	- d. Harwood v. Lippencott . 367
— d. Cheere v Smith 153, 154, 314	— d. Henniker v. Walt 315
- d. Cheeser v. Creed 663	— d. Huddart
- d. Chippendale v. Dyson . 364 - d. Clarges v. Foster 669	- d Hill v. Roe
- d. Clun v. Clark 663	_ d. Hindley v. Ricarby . 431, 658
- 4. Coates v. Somerville 638	d. Hodson v. Staple
— d. Cobbey v. Roe	— d. Halcomb v. Johnson . 667
— d. Cockburn v. Roe	— d. Hollingsworth v. Stennett 128, 663 — d. Holmes v. Roe 398
- d. Compere v. Hicks 437	- d. Horton v. Rhys
— d. Cooper v. Roe 403	d. Hubbard v. Roe 386
— d. Coore v. Clare 45 — d. Courtail v. Thomas 713	- d. Huddleston v. Johnson . 128
— d. Courtail v. Thomas 713 — d Courthorpe v. Rose 396	— d. Hughes v. Dyeball 434 — d. Hutchinson v. Roe 385
- d. Cox and others 666	— d. Ingram v. Roe
— d. Соже v. Day 605	— d. Irwin v. Roe 385
- d. Cuff v. Stradling 435 - d. Da Casta v. Wharton 431	- d. Isherwood v. Roe 376
- d. Dalton v. Jones 640	- d. Jackson v. Ashburner . 43, 45 - d v. Roe 400
- d. Darlington v. Cock . 384, 393	— d. James v. Roe
- L Darmant v. Roe 376	- d v Staunton 436
- d. Davis v. Elsham 682	— d. Jenks v. Roo 413 — d. Jolliffe v. Sibourn 636
— d. Davis v. Creed 663	— d. Jolliffe v. Sibourn 636 — d. Jones v. Roe
_ d v. Roe	— d. Kerby v. Carter 635
- d. Digby v. Steel 668	- d. Knight v. Quigley 128
- d. Dillon v. Parker	- d. Lambert v. Roe 365 - d. Lawrence v. Shawcross 363, 399
— d. Downes v. Roe	- d. Lawrence v. Shawcross 363, 399 - d. Leesou v Sayer 118
- d. Ellis v. Sandham 309	- d. Licester v. Biggs 429
- d. Elwood v. Rne 384	- d. Lichfield v. Stucey 434
- d. Esdail v. Mitchell	- d. Locke v. Franklin
- d. Evans v. Roe . 374, 393, 436 . d. Eyre v. Lambley . 428, 667	- d. Lockwood v. Clarke
- d. Palmouth (E) v. Alderson . 495	— d. Lowe v Roe 392
- d. Field v. Roe 376, 384	- d. Luff v. Ros
- d. Finlayson v. Bailey	— d. Macartney v. Crick
- d. Forbes v. lice	- d. Munton v. Austin . 629, 631
W. T APPROP AS AL MANAGEMENT	

Page (Page
Doe d. Marriot v. Edwards 434	Doe d. Roby v. Maisey 408
— d. Marshall v. Roe 403 — d. Martin v. Roe 409	— d. Rodd v. Archer 666 — d. Rogers v. Rogers 696
- d v. Watts . 635, 663	- d. Roupel v. Roe
- d. Maslin v. Packer 18	— d. Saunders v. Roe 368
— d. —— v. Roe 252 — d. Matthews v. Jackson 666	 d. Scales v. Bragg d. Scholefield r. Alexander 684
— d. Matthewson v. Wightman,	- d. Schovell v. Roe 394
665, 666, 667	_ d. Scott v. Miller
- d. Meyrick v. Meyrick 367 - d. Milnes v. Lamb 429	— d. Seabrook v. Roe 393 — d. Shaw v. Roe
— d. Mitchell v. Levi	— d. Shepherd v. Roe 398, 435
d. Mitchinson v. Carter . 153, 198	— d. Sheppard v. Allen 684
- d. Moore v. Lawder . 118, 663 - d. Morecraft v. Meux 116, 674, 683	— d. Shore v. Porter 663 — d. Simmons v. Roc 386, 489
- d. Morgan v. Church 666	- d. Simpson v. Butcher 636
— d. —— v. Ros 387	- d. Smith v. Roe . 386, 402, 409
- d. Morland v. Bayliss 385 - d. Morneth v. Roe 397	— d. —— v. Webber 434 — d. 8mithers, v. Roe 374, 436
— d. Morpeth v. Roe 397 — d. Mortlake v. Roe 396	- d. Smyth v. Smyth
- d. Mount v. Roberts 635	— d. Snape v. Snape 367
— d. Murphy v. Moore 384 — d. Nash v. Birch	— d. Southampton v. Roe
— d. Neale v. Ros	- d. Spicer v. Lea. 629, 664, 665, 666
- d. Neville v. Dunbar 665, 668	— d. Sykes v. Durnford 427, 665, 669
— d. Norfolk v. Hawke	— d. Talbot v. Roe
— d. Norman v. Roe	- d. Taylor v. Johnson
— d. Oldham v. Roe 400	- d. Tenison v. Yarborough . 638
- d v. Wolley 250 - d. Orleton v. Harper 435	— d. Teverell v. Snee
- d. Orleton v. Harper	- d. Thomas v. Roe
— d. Packer v. Hilliard 373	— d. Tibbs v. Ros 389
— d. Parry v. Hazell 33, 664 — d. Patteshall v. Turford 669	— d. Tilt v. Stratton 663 — d. Tilvard v. Cooper
- d. Patteshall v. Turford 669 - d. Paul v. Hurst 395	— d. Tilyard v. Cooper
- d. Peacock v. Raffan 664	— d. Treat v. Ros 397
— d. Pearson v. Ries	— d. Tubb v. Roe
— d. —— v. Roe	- d. Tucker v. Morse 637 - d v. Roe
- d. Phillips v. Butler 666	- d. Turncroft v. Ros 395
d v. Roe 368, 371 d. Pitcher v. Donovan 667	- d. Twisden v. Roe 400
- d. Pitt v. Hogg 661	- d. Vaughan v. Meyler 634 - d. Vickery v. Jackson 640
— d. — v. Laming 660, 651	- d. Visger v. Roe 396
- dv. Shewin 299 - d. Pool v. Hetherington . 425, 433	— d. Walthman v. Miles 663 — d. Walker v. Groves
- d. Potter v. Archer 635	- d v. Roe 386, 390, 395, 409
- d v. Roe	— d Warne v. Roe 386
- d. Pritchard v. Dodd 69, 478, 630 - d. Pritchett v. Mitchell 426	- d. Warner v. Brown 635, 656, 663 - d. Warren v. Roe
- d. Probert v. Ros 402	- d. Waters v. Houghton
- d. Proeser v. King	- d. Watts v. Roe
- d. Prothero v. Roe 400	- d. Webb v. Dixon 633 - d West v. Davis 426
- d. Pugh v. Boe 390, 397	- d. Westmorland v. Smith . 69
- d. Quintin v. Roe 401	— d. Wetherell v. Bird . 128, 641
- d. Rains v. Kneller	- d v. Roe
— d. Read v. Ridout 127	- d. Wheedon v. Paul . 430, 684
— d. Rigby v. Roe 400	— d. Whitfield v. Roe . 16, 365, 401
— d. Rigge v. Bell . 483, 635, 667 — d. Roberts v. Roberts 226	 d. Wilcockson v. Lynch d. Williams v. Humphreys 668
- d. Robinson v. Roe 397	- d v. Matthews

Page	1 Page
Det d. Williams v. Pasqueli	Fisher v. Wigg
- d v. Roe 386	Fletcher v. Dyche 96
- d. Williamson v. Dawson . 378	v. Saunders
- d v. Ros	Flight v. Barton
- d. Wilson v. Roe	Ford a Tiller
-4. — v. Smith	Fort v. Clarke
- d. Winckley v. Pye 425, 646	Foord v. Wilson 312 Ford v. Tilley 130 Fort v. Clarke 260 Fowkes v. Joyce 328 Fraser v. Skey 314
- d. Worthington v. Butcher . 435	Fraser v. Skey
- 4. Younghusband w. Ros . 304	Freezings of action as the first of the firs
Donellan v. Read	Frew v. Burton
Durrell v. Collins	Fryer d. Harris v. Griffiths 674
Downing v. Bissell	Fuller v. Abbott 149
Downer v. Colle	Furley d. Canterbury v. Wood . 436
Driver d. Oxenden v. Lawrence . 367 Drury v. Mann	}
Du Bost v. Beresford	
Dunber v. Dunn	•
Dunk v. Hunter	1
Punn v. Large	George v. Lousley
1.8ke	Gerrard v. Clifton 310
_	Girardy v. Richardson
R	Glover v. Coles . , 359
Period Constant - Donder - Dr. 491	Godfrey v. Little 648
East s. Harding	Godson v. Forbes
Restrict a Reserve	Goldsmid v. Goldsmid
Estop v. Lyon	Goodbehere v. Beavan 199 Goodright d. Charter v. Cordwent . 668
Rigg v. Strafford	v. Hart
Edgell v. Dallimore 216	v. Moore 366
Edmunds v. Cox	d. Hare v. Cator
Rastwood v. Browne 234 Rastwood v. Browne 234 Rator v. Lyon 380 Rage v. Strafford 483 Edgell v. Dallimore 216 Raminds v. Cox 256 Rawards v. Harben 234 — v. Hetherington 129 Efford v. Burgess 148 Ramery v. Wase 210 Emmerson v. Heelis 278, 279 Etherton v. Propolewell 340	d. Nicholls v. Mark . 633
v. Hetherington 129	d. Stevens v. Moss . 375
Libra v. Burgess 148	d. Stevenson v. Noright, 365
Emery c. Wase	d. Thompson v. Saul . 433
Emmerson v. Heelis 278, 379	d. Walter v. Davids . 683
Roma e Vanahan	Goodtitle v. Tombs
Ivelyn v. Evelyn	d. Clarges v. Funuean 695, 696 d. Edwards v. Bailey . 628
Exercise Determine 916	d. Edwards v. Bailey . 628
Tyre v. Bartrop	d. Galiaway v. Herbert . 636
- v. Everett	d. Green v. Notitle . 366
	d. Jones v. Jones 439
	d. Leon v. Lanedown . 366
P	d. Mortimer v. Notitle . 388
This is American	d. Ranger v. Ros 374
Pain v. Ayers	d. Roberts v. Badtitle . 390
Palmouth (E.) v Alderson	Goodwin v. Blackman 275
Pane v. Spencer	Goodwin v. Blackman
Fancy v. Scott	1 Gordon et Mitchell 614
Farquharson v. Barston 119	Goring v. Nash 32
Parrance v. Elkington 351,449	Gorton v. Falkner
Fawcett v. Hall 683	Gosbell v. Archer 282, 283
Featherston v. Cooper 201	Gough v. Howard 644
Fonn d. Pewtries v. Granger . 425	Gourlay v. Somerset . 132,660
Thomas v. Griffiths 427	Graham v. Sime
Formy d. Bastham v. Child 639	Gray v. Gutteridge
Fenton v. Logan	Greenaway v. Adams
Tables a Consu	Grey v. Cuthbertson
Fildes v. Hooker . 42, 116, 277, 289	Griffith e. Hodges 34, 129
Fisher v. Algar 346	Grimmann v. Legg
	_
	C

Grove v. Cox ,	Page
Grove v. Cox	Horsefull v. Mather
	Western Contract
Grumbell v. Roper	Hotley v. Scott
Guiliver v Drinkwater . 437 d. Tasker v. Burr . 663, 664	Howard o. Basile ,
Wester V. Burt . 000, 004	
Gunnis v. Krhart	Howton v. Fregreen
Guillion of Halbanak 357	Husban a Gorden 484
v. Stone 42	Howton v. Freerich Hucker v. Gordon Hughes v. Statham Hurry v. Rickman Hutton v Warren Hyde v. Hill v. Skinner 11, 533
Gwyllim v. Scholey	Huston Blokman 344
4 my (((122) (122) () () () ()	Unition a Wasses A45
	Hader, Hill) 35st
н	n Skinner 31 ASS
Halford v. Hutch	
Hell v. Burgues 128	
v. Hutchons	ĭ
Plaining from v. Stead, 49, 50, 127,	*
129, 341	Iggulden c. Nay
Hamilton s. Clanricarde #39	Togleby C. Monaley
Hancock v. Caffyn 49	Lugues v. At acquigat 201
Hand v Dinley 360	Ingleby v. Monalry 360 Inglies v. Macdongal 261 Inman v. Stamp 34 Ireland v. Byresford 369
Hanson v. Stevenson 188	Liciting of Directors
TT	Dieta 131
v. Wilson 461, 469	Tolch Service of Mandhers 640
Hardy v Bern 263	Trans of Recallering
Hare v. Groves , , 56	trough to committations
Harley v. King 198	
Herman v. Fisher	
Harper v. Eyles , , , 438	J.
v. Teswell 343	
######################################	Jackson v. Neale 656 v. Stacey 464 Janub v. Ring 364 James d. Aubrey v. Jenkins 636
Harris v. Bryant	r. Stacey 404
	Janub P. Hing
v. Jones 70, 640	James a. Aubrey v. Jenkins 636
thinner the	0 Dodd
Marriage & Bainbridge 540	Tandetin a tanta
Words 95t	v Dodd
Unst v Knott	Tenter of Class
Haravell a Hara	Jennet of Clerk
Harris Rows	Language of Theoretication 24
Hawking v. Kemp	January Control of Cultar 18 985
- v. Sherman 194	d Millan Cutte 900
Havilar v. Ellis	John v. Jenkine 48, 199 347
Heath v. Kev	John v Jenkma 46, 129, 347 Johns v. Whitty 683
### ### ### ### ### #### #### ########	Johnson v. Whitty Johnson v. Huldleston . 149, 351, 667
Writing 374	Jones r. Ashburnbam 30
Helford v. Alger 358	- d, Griffith v. March . 605, 668
Hegan v. Johnson 49, 341	Jory v Orchard 498
Handerson v. Hay 41,51	Jourdaine v. Lefevre 314
Hill v. Bare'ay 132, 365	
Hinde v. Whitchouse	
Hindle v. Blades 365	K
Hobers v. Trever , , , 98	
Holding v. Pigott ,	Kaye v. Bolton
Holland v. Bird 319	Keech d. Warne v. Hall . 93, 637, 663
v Salser	Kemble c. Ferren 98
Holoret Goring 461	Kemp o. Derrott
r Scient	Kennedy v. Lee
Holtzerffe te Baker	Kenney v. May 346
Hoper Booth	Ker o Rosburgh
12 C. D Thomas 944	Kerninke v. Winta
PROPERTY	Keymere v. Summers

Page	
Kimpton v. Eve 644	Melwick v. Luter
King r. Joseph 208	Melwick v. Luter
King v. Joseph	Mesnard v. Aldridge
Kinnersley v. Orpe 660	Management 4 240 000 000 000
Knight v. Bennett 69, 341	Methold v. Nought 399 Meynut v. Southgate 109 Millener v. Robinson 374 Miller v. Green 343 Mines v. Grey 119 Mitchell v. Hayne 273 Mollett v. Brayne 127 Monk v. Cooper
Knotts v. Curtis	Meynut v. Southgate . 109
Knoz v. Symonds	Millener v. Robinson 374
Keoystra v. Lucas 462, 634	Miller v. Green 343
	Milnes v. Grey 119
	Mitchell v. Hayne
L	Money v. Brayne 127
	Monk v. Cooper
Laisson v. Tremere 260	Monk v. Cooper Moore v. Foley v. Plymouth (Earl). Monrocol v. William
Lake v. Smith	Morewood a Wilker
Lambe v. Hemans 108	Morewood v. Wilkes 226 Morgan d. Dowding v. Bissell 46
Lampon v. Cork	Morran v. Rodea
lancaster r. Hemington . 216	Morgan v. Rodes
Langster v. Birkhead 108	Morris v. Eulington
Lambe v. Hemans	Morse v. Koyal
Lant v. Norris	Moss v. Gallimore
Layesory v. Dryssic	Musgrave d. Hilton v. Shelley 436 Musselbrook v. Dunkin 211
Lawrence v. Hodgson . 211, 216 Leeds v. Burrows 643	Musselbrook v. Dunkin 211
Leeds v. Burrows	
Legg d. Scott v. Benion 665	1
- r. Strudwick 325	N
	•
Leigh r. Heald	Neale v. Mackenzie 136
lester v. Gariand	v. Wyllie . 100
Lewis c. Reard	Nerot v. Wallace
Liebenrood v. Vines 73, 645	Nesbit v. Meyer 190
Lloyd v. Crisp 153, 164, 660	Newman 11 Anderton 40 040
- v. Crispe	v. Barnard 363
t. Rosbee	Nitingale v. Lawson Nind v. Marshall Nighet v. Marith
Lock c. Valliamy	Nind C. Marshall
STANGE C. CHALCH	Mandan w 177111
9.00	
Lecas v. Comerford	
v. Wilson 207	Nombre of TV
Ladford r. Barber 365, 366	Nowell v. Rouke 639
Luskin r. Nunn	Nuttall v. Stauuton 345
Luxmore v. Robson 70,641	
,	
	o
M	V
~	Oakapple d. Green v. Corpus 664
Macher r. Foundling Hospital , 661	Oakley A. Adamson
Mackay v. Mackreth 634, 663	Ugilvie v. Foljamb 110 977
Madden d. Baker v. White . 664	Unalow v. Corrie 167 108
Mallam v. Arden 342	Opperman v. Smith
Mann v. Lovejoy 56, 69, 128	Orby v. Mohun 590 gos
Mansel v. Burridge 215	U Kelliev v. reatherstone 244
Mark d. Noyes	Orgill v. Kemshead 198
Marks v. Marriott 175	Orme v. Young 260
Marrack v. Ellis	Owen v. Legh 349
Martin v. Mitchell	1
Martindale v Booth	P
Maison v. Trower	
Mathews v. W hetton	Page v. Eamer
Matts v. Hawkins 109	Paget v. Gee
Maybew v. Cricketts	v. Perchard
♥ ····································	309

	Page	R R	
Palmer v. Edwards	315, 581		Dage
Parker v. Bayliss	. 119 . 30	Rand v. Vaughan	Page . 349
d. Walker v. Constable		Randall v. Randall	. 216
	341, 581	Read v. Brookman	
Parry v. Hindle	. 425	Reading v. Barnard	. 109
Partridge v. Sowerby	. 129	Redpath v. Roberts	34, 198
Patrick v. Powlet		Reed v. Blades	. 995
Paul v. Goodluck	. 356	— v. Wilmott	235
v. Nurse	. 196	Rees d. Perkins v. Phillips .	. 364
Payler v. Homersham	. 30 273, 278	Reid v. Parsons	. 683
Payne v. Cave	273, 276	Reily v. Jones	
Peacock v. Purvis	. 342	Rennie v. Robinson	400
Peake v. Highfield	. 190	Rez v. Ashton .	. 477
Pearce v. Cheslyn	. 49	- v. Berrington	. 960
Pearsall v. Summerset	. 246	— v. Davis	. 348
Peck v. Wood	. 108	— v. Hendon	. 117
Pellick v. Deban	. 661	- v. Hoseason	
Pember v. Mathers . 247	, 277, 278	— v. Hungerford	-
Perreau v. Beavan	. 357 . 259	- v. Lewis	. 304
Perring v. Foy		- v. Mitcham	353
Perryman v. Steggall	210	- v. Stone	
Phillips v. Berryman	. 249	- v. Topping	. 683
v. Bucks	. 29	Rhodes v. Bullard	. 310
v. Donati	. 109	Rich v. Jackson	41
v. Everard	. 133	— v. Wooley	. 348
v. Hartley	. 44	Richards v. Acton	
v. Pearce	,	Richardson v. Evans	. 659 . 631
—— v. Price	. 357 . 57	Rickett v. Tullick	. 663
Phillipson v. Leigh Phipps v. Ingram	. 266	Rickett v. Tullick Ridout v. Pye	. 209
.—— v. Scalthorp	127	Right d. Bassett v. Thomas	695, 696
Pigott v. Birtles		d. Bomsall v. Wrong .	. 385
Pinero v. Judson	. 48	d. Flower v. Darby .	663, 666
Pindar v. Ainsley	. 42	Roberts v. Barker	. 642
Pitt v. Shaw	. 346	v. Jackson	. 343
Plant v. James	. 463	v. Karr	. 454
Pleasant d. Hayton v. Benson	. 665	Robertson v. St. John	. 216
Pluck v. Digges Pomery v. Partington	. 196 . 696	Robinson v. Henderson	148,340
Dambar Dimak	455	Robson v. Godfrey	97
Ponsonby v. Adams	309	Rockingham v. Penryce	. 147
Pool v. Court	. 644	Roe d. Bamford v. Haley	. 633
Poole v. Bentley	. 46	- d. Berkley v. York	. 713
Pope v. Biggs	26 5, 570	- d. Bree v. Lees	. 632
Porter v. Shephard	. 315	— d. Durant v. Doe	371,664
Postman v. Harrell	. 348	- d. Eberall v. Lowe	. 439 . 393
Potter v. Newman	. 211	— d. Fenwick v. Dos	. 674
Powley v. Walker	. 643 . 643	— d. Goatley v. Payne . — d. Gregson v. Harrison .	660, 683
Thatta LTillman	. 109	- d. Hall v. Buckley	. 695
Prece v. Corrie	194,348	- d. Hambrook v. Doe	398
Preston v. Merceau	. 141	- d. Hunter v. Galliers .	. 683
Price v. Assheton	. 134	- d. Jordan v. Ward	635, 667
v. Dyer	54, 633	- d. Kaye v. Soley	. 366
v. Williams	. 132	- d. Reade v. Reade	433
Pugh v. Duke of Leeds	631, 695	- d. Rochester v. Pierce .	428,665
Pulteney v. Warren	. 437	- d. West v. Davis	365, 436 436
Pultney v. Lady Cravan	. 638 . 667	— d. Wrangham v. Hersey . — v. Hodgson	637
Pulteny v. Shelton Purvis v. Rayner	. 265	- v. Wiggs	665
Pym v. Blackburn	41,56	Rogers v. Birkman	. 395

TABLE OF CASES CITED.

Page	Prince
Rogers v. Brooks 466	Staniforth v. Fox
v. Pitcher	Stanley v. Wharton 347
Rolls v. Roseweil	Stansfield v. Johnson . 279, 380
Rosts v. Dormer	Staple v. Haydon
Routledge v. Grant	Statham v. Liverpool
Rubery v. Jervoise	Steel v. Brown
Rubery v. Jervoise	Staple v. Haydon
v. Rider	Stiles v. Cooper
v. Stokes	Stock v. Booth
Ryal s. Rich	Stokes v. Moor
	Stone v. Evans 198
	v. Whiting 127
8	Strickland v. Maxwell 631
	Stiles v. Cooper
St. John's College v. Marcott 344	l amitanto pienoh 963
St. Saviour's, Southwark v. Smith. 196	Sutton v. Chaplin
Selisbury v. Marshall	Symes v. Goodfellow
Semuel v. Cooper	Symes v. Goodfellow
Saunders v. Darling	Symonds v. Page 487
r. Musgrave	1
Samplerson v. Hanson 148	
Scott z. Waithman 355	T
Sendamore v. Stratton 640	1
Seal v. Phillips	Tacey v. Talbot 325
Senion v. Niado	Tarrance v. Elkington
Selby v. Selby	Taylor v. Chapman
Sells z. Hoare	v. Cole
Serior v. Armitage 645 Seven v. Mihil 344	n. Horde 569 697
Seven v. Mihil	v. risher
Shew v. Brand	— v. Keed 108
Shelton p. Levens	v. Shum . 190, 196, 240, 278
Shepherd r. Kealley 267	v. Whitehead 455, 464
Sherry v. Oke	Thacker v. Wilson 109 Thomas v. Cook
- c. Preston 347	M Harmon MA
Shipwick v. Blanchard 349	v. Thomas
Shirley v. Newman	v. Pemberton 188
Short v. Hubbard	Thompson v. Maberley
Shutt v. Proctor	Thomson v. Wilson 127
Skee c. Coxon	Thorton v. Adams 348
	v. Hornby
Smith v. Chance 642	Throgmorton v. Whelpdale 663
v. Clarke 279	Thunder d. Weaver v. Belcher 93, 664 Timmins v. Rawlinson . 351, 352, 665
T. Dickenson	1 - -
v. Goodwin 345	Tingrey v. Brown
v. Russell	Torriano v. Young . 71, 198, 129 Toussaint v. Hartop . 255
	Townshend v. Stangroom 41
	Tracey v. Talbot
Snook v. Hellyer	Tritton v. Foote 533, 589, 639
Soulsby v. Neving . 149, 351	l Trotter v. Simpson . 300
3003er v. Drake	Tuck v. Tyson 199, 239
Southcott v. Braithwait	Turner v. Meymott 408
Sparkes v. Martindale	Tuck v. Tyson 199, 239 Turner v. Meymott 408 — v. Turner 358 Twining v. Morrice 279
Spittle v. Lavendar	Twining v. Morrice 279
Spittle v. Lavendar 273	1
Spragg v. Hammond	}
Sprightly d. Collins v. Dunch	ΰ
Stafford v. London	
240, 277, 278	Uncle v. Watson
•	d
	~

· v	Page
•	White v. Warner
Po	we Whitehead v. Clifford 127
Van v. Corpe 131,-	
Vere v. Lovenden 41,	51 Whitfield v. Braudwood 353
Vernon v. Smith	314 Whittaker v. Barker 645
	Whitworth v. Smith 349
	Wight v. Dickson 628
W	Wilde c. Clarkson 258
•	Wilkins v. Fry 167, 190
Wadham v. Marlow 154, 1	196 Wilkins v. Hall
	346 Williams v. Pocklington 109 280 Williamson v. Butterfield 308
Walker v. Constable 279,	280 Williamson v. Butterfield 308
v. Perkins 30,	34 Wilson v. Abbott
v. Reevo	196 v. Chisholm 48
Wallace v. King	
	14N +1 Nithlet
Walls v. Aitcheson 34, 1	28 v. Weller
	Windmore v. Hubbard 477
Wansell v. Southwood	207 Wingfield v. Roe
Ward v. Const	
v. Henley	250 Wallam w Huann
Ward v. Const	141 Wolveridge v. Steward 198
Wardal v. Smith	234 Wood v. Clarke
Warman v. Faithful	
	210 — v. Griffiths
Warren v- Richardson 133, 2	289 Wooton v. Harvey
Warring v. Macreth	42 Wright d. Arm v. Cartwright . 631
Waterman v. Yea	157 d. Bayley v. Wrong 401
797 4 77	
v. M'Cullum	208 — v. Simpson
v. Main	340 l a 174
Watts v. Brookes	948 — v. Smith
	343 Wyndham v. Way 452, 503
Weak d. Taylor v. Escot . 478, (
Wigley v. Rogers	
Webb v. Russell 316, t	
	188 Y
Wells v. Ody	
	349 Yea v. Lethbridge 356
	346 York v. Stone
Wetherall v. Geering 659, 6	
	162
Wharton v. King	
Whatley v. Dawson	
Wheeler v. Collier	279 Zouch v. Parsons
	28d. Ward v. Willingale . 668, 684

L'ANDLORD AND TENANT.

A LANDLORD is defined by Lord Coke, in his Definition of Commentaries on Littleton, (a) to be a person of a landlord. whom lands or tenements are holden.

A tenant, according to Kitchen, (b) signifies one A tenant. that holds or possesses lands or tenements by any kind of right, either in fee, for life, or years, or at will.(c)

The word fee is applied to all those lands and The applicatenements which are held by perpetual right; and word fee. this estate in fee is commonly divided into fee absolute, otherwise called fee simple,(d) and fee conditional, termed otherwise fee tail.

A TENANT in fee simple is where a man hath lands Of an estate or tenements to hold to him and his heirs for ever; (e) infeesimple. and such estate is acknowledged to be the highest and largest that can be in law, or that can be had in real property.

(c) See Co. Lit. 57, 205.

(b) Kitchen, fo. 160.
(c) Every subject of this kingdom that occupieth lands, or inhabits any The meanhouse or tenement, is said to be a tenant, tenens a tenendo, because he ing of the must hold of some lord, or other, as lands in England are, since the intro-word tenant, enetion of feuds, supposed to be holden mediately or immediately of the

king, who is summus dominus supra omnes. 2 Inst. 531.

Of the general ancient tenures; knight's service; chivalry; escuage; petit Ancient repeatry; also villenage and pillenage, whereby the lord might vassal and tenures ensiave his tenant's person at his pleasure, or pillage him of his goods, have abolished. Seen all taken away by Stat. 12, Car. 2, c. 24. The common tenures at this day are fee simple; fee tail; by the curtsey; in dower; for life; for years; and copyhold tenure. 2 Black. 59.

(d) The student will probably better comprehend the meaning of the The mean-

word fee, by informing him that an estate in fee means an estate of in- ing of the berkance; and when the word simple is annexed to it, imports an absolute word fee. inheritance, not confined to a particular class of heirs, but descendable to the heirs general of the person last seized, and is used in contradistinction to fees conditional at the common law, or a fee tail by the Statute of

Westminster, called de donis.—Lit. s. l. (see p. 5. post.)

(e) This estate confers on the owner an unlimited power of alienation; Powers conhe may grant any less estate out of it; raise uses on his own seizin, or ferred by an on the seizin of his assignee; create a lease, or determinable fee, or a estate in fee fee tail, or an estate for life, with or without remainders over; he may simple. Shewise subject the estate to any condition not repugnant to law, or restrain the tenant's power of alienation over it, within the rules of perpetuity.—See Preston, on Abst., v. i., 357—377; v. iii, 221, 222.

It is in general necessary in deeds that the word

The word fee simple.

heirs neces heirs be made use of in making a fee simple; but to create a by the recent act of 1st Vic. c. 26, s. 28,(f) for the amendment of the law with respect to wills, it is The word enacted, "that when any real estate shall be debeirs not ne- vised to any person without any words of limitawills made tion, such devise shall be construed to pass the on and sub-fec simple, or other the whole estate or interest sequently to 1st January, which the testator had power to dispose of by will 1838. (1 Vic. in such real estate, unless the contrary intention shall appear by the will."

The rights

c. 26, s. 28.)

The owner of an estate(g) in fee simple, as a conof a tenant sequence may create every other estate out of it, and as every other estate is included in a fee simple, so will every other estate created out of the same premises, merge therein; in short, this estate confers, on the person entitled in possession, an uncontrolled power(h) and absolute dominion over the hereditaments and premises comprising the subject of such estate.(i)

A TENANT in fee tail is where one is seized with Of an estate limitations to him and the heirs of his body. tail.

Tail general

It is called tail general (j) when to a man or and special woman, and the heirs of his or her body; and is called tail special(k) when to a man and his wife, and the heirs of their two bodies, or to a man and the heirs of his body, on a certain woman that he may

Act 1, Vict.

(f) This stat. is entitled "An Act for the amending of the Law with respect to Wills," but it does not extend to any will made before the 1st January, 1838. The most apt word that can be found in wills, made before that time, to pass an estate in fee, is the word "heirs;" but, other words in such wills, expressive of an intention that the devisee shall hold for ever, or that the estate shall not determine at the devisee's death, nor be confined to issue, will have the same effect. So a devise importing the whole interest, as all my reul estate; my tenant right estate; all I am worth; all my property; whatever else I have in the world; and the like will carry the fee.—18 Ves. 193; 11 East, 518; 1 Bro. c c. 437; Cowp. 306.

The word estate.

(g) The word estate signifies the interest which a tenant has in lands or hereditaments.—Co. Lit. 345; 2 Black. 103.

(h) 1 Lil. 541.
(i) See Watkins' Prin., chap. 9. and cases there referred to, and see note e to p. l.

(i) An estate in tail male general is, where lands and tenements are Tail male given to a man or woman, and the heirs male of his or her body. general. (k) An estate tail semale general is, where lands are given to a man and

Tail female woman, and the heirs female of his or her body. general.

marry to be begotten, or to a woman, and the heirs Tail special.

of her body, by a certain man to be begotten.(1)

Under the ancient conveyance, to a man and The right of the heirs of his body, it was held at common law tail originthat, until issue was born, he had not the absolute ally at comproperty in the estate, it being limited by the grant and prior to not to his general heir, but to the heirs of his body; the statute de donis. but, that the moment issue was born, the condition being performed, the estate became absolutely his property, and, he could dispose of it in the same manner as a tenant in fee simple; but, by the stat. The stat. de 13Ed. I.c. 1,(m) it was declared, that the will of the donor or grantor should be observed, and that an estate so granted to a man and the heirs of his body, should descend to the issue, and, that he should not have power to alienate the same.

Estates tail being thus introduced, by which Perpetuity a perpetuity was established, and which was soon formerly of found to be productive of the greatest inconvenience, the judges were induced (as no legislative enactment could be obtained(n) to unfetter these inheritances) to sanction means (by judicial de-

(I) When lands are given to a man and his wife, and the heirs of their Tenant in two bodies, if one of them be dead without issue, the other is called tenant tail after in tail after possibility of issue extinct; in fact, the only way in which possibility of this estate ran arise, is by the death of one of the tenants without issue; issue extinct and the tenant of such estate, for all the purposes of alienation, title and forfeiture is considered as being merely an estate for life.—See 1 Prest. on Absts. 447-450.

(m) Commonly called the Stat. of Westminster, de donis conditionalibus. Statute of It will be seen that prior to this statute, the estate, afterwards called fee Westminster tail, was called a conditional fee, being restrained to a particular class of heirs; as, to the heirs male of a man's body, or the heirs male or female of a man's body, and was termed conditional, from the express or implied condition annexed to it, that the donee dying without such particular beirs, the land should revert to the donor. As, however, the intention of the donor could be, and generally was, defeated by the donee, upon issue born by his aliening the land, and taking back a fee simple absolute, descendible to his heirs general, the said statute was passed, with the object of taking away this power of aliening and preserving the estate to the issue, and also the reversion on failure of such issue to the donor; so, that after the passing of this statute it was determined, that when an estate was limited to a man and the heirs of his body, the donee should not in future have a conditional fee, but a particular estate called an estate tail —See Co. Lit. s. 13.

(a) In those days, the legistature would not consent to the repealing of The reason his statute, they being desirous of perpetuating their own families by the why the belp of the same, and thus matters stood till the reign of Edward 4, when statute was the remedy was found out by the introduction of common recoveries, not repealed. (Sounded upon the strict rules and principles of law,) and from this time a

How barred termination) for enabling tenants in tail to alien such estates, by holding that a feigned common recovery should not only bar the issue in tail, but the reversions and remainders expectant thereon; and by a liberal construction of the statutes of the 4 Hen. VII., c. 24, and 32 Hen. VIII., they held that a tenant in tail might bar his issue in tail by fine.(o) >

The mode of recovery found to be for barring the entail.

These fictitious modes of barring the entail by fine or recovery being complicated, and the process inconvenient circuitous and expensive, an act was passed in the 3rd and 4th years of the reign of his late majesty Wil. IV., c. 74. for the purpose of abolishing fines and recoveries, and substituting more simple modes of assurance, and thereby empowering every actual tenant in tail(p) to dispose(q) of, for an estate in fee simple absolute, or for any less estate, the lands entailed by any deed to be enrolled (as therein mentioned)(r) by which a tenant in fee can convey, saving the rights of persons in respect of estates prior The deed of to the estate tail. And providing by sec. 41, of the same act, that every assurance by a tenant in tail, act for con- (except a lease not exceeding twenty-one years, at estate tail to a rack rent, or not less than five-sixths of a rack be enrolled. rent,) shall be inoperative, unless enrolled in chancery within six months after the execution thereof.(s)

assurance under the veying the

> common recovery was considered as one of the common assurances of the realm, and not as real transactions, but as conveyances of record, invented to give a tenant in tail an absolute power to dispose of his estate.—See Wills, rep. 448—551: 5 J. B. Moore, 607.
>
> (o) See Wills, rep. 452. The practice was in case of a tenant in tail with

Recovery.

remainders or reversions over to strangers, a recovery was resorted to as the means of destroying those reversions; but, when the tenant in tail was seized with the immediate remainder or reversion to himself, he might har his issue by fine.

(p) Whether in possession, remainder, or contingency, sec 15. sec. of this statute enacts, that no fine or recovery shall be levied or suffered after the 31st Dec. 1833.

Restraint of tail, ex provisione viri, under 11 Henry 7, c. 20, in settlements made the power of disposition.

(q) The power of disposition not to be exercised by woman tenants in tail, ex provisione viri, under 11 Henry 7, c. 20, in settlements made before the passing of the statute, except with such assent as is required by the act, see sec. 16: and, it is provided, that, except as to lands comprised in any settlement made before the passing of this act, the said act of 11 Hen. 7 be repealed, sec. 17:—it is also enacted, that the power of disposition shall not extend to tenants in tail, restrained by the 34 and 35 Hen. 8, c. 20, intitled "An Act to embar feigned recovery of lands wherein the King is in reversion," nor to tenants in tail after possibility of issue extinct, s. 18; nor is the act to extend to enable issue inheritable to estates tail, to bar their expectancies, see sec. 20.

(r) After the 31st of December, 18:3, see sec. 15.
(s) By the latter part of this section of the act it is provided, that if the Rarolment.

Estates called freehold, are of four kinds; Freehold. that is to say, for one's own life; (t) for the life of another; in dower, and by the curtesy of

England. (u)

A TENANT for his own life, (as incident annexed Tenant for to the enjoyment of his estate,) may cut underwood, life. fell timber for repairs, work mines that have been opened, and with new shafts and pits pursue the old veins.(v) He is entitled to reasonable estovers; that is, housebote, (n) ploughbote, (x) and haybote, without assignment.(y)

On the determination of this estate by the act of Determina. law, or by any sudden or casual determination, (as tion of the estate for by death,) the tenant or his executors are entitled life. to emblements, (z) and this privilege extends to the

under-tenant or lessee of the tenant for life.

assurance by which any disposition of lands shall be effected under this If by baract, shall be a bargain and sale, such assurance, although not enrolled gain and within the time prescribed by the act passed in the 27 Hen. 8, intituled sale.

"An Act for Enrolment of Bargains and Sales," shall, if enrolled in the said court of chancery, within the time prescribed by this clause, be as good and ralled as the same would have been if the came had been as good and valid as the same would have been if the same had been enrolled in the said court within the time prescribed by the said act of Hen. 8.

(f) Where a lease is made of lands or tenements to a man to hold during his Tenant pur

own life, or the life of some other person or persons, for some uncertain autre vie. period, which by possibility may continue for life, this is considered as an estate for life; but, when he holds the estate by the life of another, he is usually called tenant pur autre vie. Generally speaking, an estate for life is understood as an estate for one's own life, and not for the life of another. See pa. 6.

(w) These are all estates for life. A tenant for life has only a particular Life estates. estate: he may transfer that estate, or create any underlease to be derived out of it: but he cannot rightfully convey a greater estate than for his own life.—Prest on Abst. i. 351.

An estate for life may be surrendered or merged in the next immediate As to the estate of freehold in remainder; but such merger or surrender will not surrender of have the effect of destroying rightful or derivative estates, or charges same. granted or created by the tenant for life, before the surrender or merger

takes place.—See. Prest. on Abst. i. 358.
(c) The above is to be understood as incident to the estate of the tenant Restraint. for life, unless restrained by particular covenants. Claverly v. Claverly, 2 P. Wills, 388. But if he open new mines it is waste.—Co. Lit. 536.

(w) Housebote is a sufficient allowance of wood to repair and burn in Estovers.

(x) Ploughbote—sufficient wood for making and repairing instruments

of husbandry and haybote, for repairing fences, &c.—See 2 Bl. Com. 35.

(y) Tenant for life, without impeachment of waste, has full power to cut Tenant for down timber, as if he had an estate of inheritance, and is in the same life without manner entitled to the timber.—1 Ter. Rep. 56. 5 Sim. 235. But he impeachment not commit wilful spoil or devastation, as by pulling down houses, ment of or destroying ornamental trees.—2 Vern. 738; 1 Bro. 166; 3 Bro. 549; waste. 6 Ves Jun. 107.

(z) The word emblements signifies the profits of sown land; but is As to emsometimes used more largely for any products that arise naturally from blements.

Tenant pur autre vie.

A TENANT pur autre vie, is where lands or tenements are given, granted, demised or devised to hold during the life of another man.(a) This estate is not so great as an estate for one's own life, (b) and may be surrendered to the immediate reversioner or remainder-man, notwithstanding they be tenants for life only. (c)

Emblements of the estate pur autre vie.

The tenant of this estate is entitled to emblements on the death of cestui que vie; and with respect to forfeiture and waste, his acts are controlled by the same principles as those which apply to the acts of a tenant for his own life.

Emblements.

- the ground, as grass, fruit, and other crops.—5 Rep. 116. The doctrine of emblements extends not only to corn sown, but to roots planted, or other annual artificial profits; but, is otherwise of fruit-trees, grass, and the like, which are not planted annually at the labour and expense of the tenent but are either a permanent or natural profit of the certly and the search and the search are the search are the search and the search are the search are the search and the search are the tenant, but are either a permanent or natural profit of the earth.—Co. Lit. 55, 56; I Roll abr. 728. A tenant for life, or his representatives, shall not be prejudiced by any sudden determination of his estate, because such determination is uncertain and contingent; therefore, if a tenant for his own life sows the land, and dies before harvest, his executors shall have the emblements or profits of the crop, and not the lessor or reversioner, for the same was determined by the act of God. And it is a maxim of the law that, actus Dei nemini facit injuriam, the representatives, therefore, of the tenant for life shall have the emblements to compensate for the labour and expense of tilling, manuring, and sowing of lands, and also for the encouragement of husbandry, which being a public benefit tending to the increase and plants of manifestations. benefit tending to the increase and plenty of provisions, ought to have the utmost security and privilege, the law can give it.—Co. Lit. 55; 2 Black. 122; Cro. Eliz. 463; 2 Danv. abr. 765. If the determination be by act of law, as if a lease be made to husband and wife during coverture, (which gives them a determinable estate for life,) and the husband sows the land, and afterwards they are divorced, a vinculo matrimonii. the husband shall have the emblements in this case, for the sentence of divorce is the act of law.—Ibid. But if the determination be the tenants own act, as by surrendering to the lessor before severance, forfeiture or waste committed, or if a tenant during widowhood thinks proper to marry, in these and similar cases, the tenants having thus determined the estate by their own acts, shall not be entitled to the emblements.—
 1 Lil. abr. 511; 2 Black. 122-3.
- (n) When the estate depends on one life, the person is called the cestui que vie; when on two, or more lives, they should be denominated celles que vies.
- (b) If an estate be limitted to A. for his own life, with remainder to B. for his own life, B. is capable of taking a surrender from A. See Co.

Occupancy
of the estate whosoever could have got possession would have enjoyed the lands during the life of the cestui que vie. by general occupancy, for as the lands could not go to the heir for want of words of inheritance, nor to the executor or administrator; in respect of the estate being freehold, there was no legal owner, and the law gave it to the first person who could enter; but, by the statute 14 Geo. 2. this estate was made devisable by will, and in case there were no devisee, it should be assets in the hands of the heir, if special occupant; and, if no special occupant, it should go to

TENANCY in dower, is the marriage inheritance Tenancy in of a widow, in the third part of the lands of the husband, after his decease, so long as she lives, and is thus understood: If the marriage took place prior to the operation of the stat. 3 and 4 Wil. IV. c. 105,(d) the wife will be entitled to a third part for her life, of the lands and tenements whereof her husband was solely seized of the freehold and immediate inheritance in fee simple or in fee tail in possession, at any time during the coverture between them, so as his estate therein was such, that his issue by her would be inheritable to the same estate; but, by the said act, which does not extend to widows married before 1st January, 1834, when the marriage has taken place, on, or subsequently to such time, widows are entitled to dower out of equitable estates,(e) and seisin is not necessary to give a title to dower; (f) but no such widow is entitled to dower out of any lands which shall have been absolutely

the executors or administrators of the party, and be subject to the statute The act 1. of distribution. But by the act 1. Vict. c. 26. s. 3. as to wills, (which Vict. 26. prorepeals the act of 14. Geo. 2.) it is enacted that all real and personal viding for property may be disposed of by will, and, that the power thereby given the same. shall extend to estates pur autre vie, whether there shall or shall not be any special occupant, and of whatever tenure, and whether a corporeal or incorporeal hereditament. And by sec. 6. of the same act, it is further enacted, that if no disposition by will shall be made of any estate, pur cutre vie, of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in case of freehold land in fee simple; and, in case there shall be no special occupant of the estate, pur autre vie, whether freehold or customary freehold, tenant right, customary or copyhold, or of any other tenure; and, whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and, if the same shall come to the executor or administrator, either by reason of a special occupancy, or by virtue of this act, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the lestator or intestate.

- (d) The principal objects of this statute, are to make equitable estates in possession liable to dower, and to dispense with the necessity of the actual seizin of the husband, which, in regard to dower, before the operation of the act was indispensible; also, to take away the right of dower out of land disposed of by the husband in his life time, or by will, and to give partial charges created by the husband, priority over the right of dower; and, also to enable the husband to bar the right of dower by a declaration in deed or will, if the marriage took place after the period the act came into operation (the 1st of January, 1834.)
- (e) Before this late act, the law did not allow dower out of a trust, Sects. of the although curtesy did. See sec. 2. giving dower out of a trust. dower act.

(f) See sec. 3.

Dower.

disposed of by her husband in his life time, or by his will; (g) and a priority is to be given to partial estates charges, and specialty debts of the husband. as against the right of his widow to dower; (h) and, the husband may by a declaration in any deed of lands conveyed to him, or by any deed executed by him, signifying that his widow shall not be entitled to dower, bar her of the same, (i) or he may do so by a declaration in his will to that effect; (j) and the dower of the wife will be subject to any other restriction declared by the testator in his will; (k) also a devise of any real estate to the widow by her husband will bar her of dower; (1) but a bequest of personal estate will not bar her of dower, unless so declared.(m) If the husband has agreed not to bar the dower of his wife, the undertaking will be enforced by a court of equity.(n) A tenant in dower is liable to an action for waste and to forfeiture.(o)

Estate by

TENANCY by the curtesy of England, is a the curtesy freehold estate, and arises where a man marries a woman that hath an estate, either by descent or purchase, and hath a child born alive by her, (p) and then the woman dies the husband shall enjoy the land(q) during his life, and is called tenant by the curtesy of England. The wife must be seized in fee simple or fee tail.(r)

There must be an actual seisin in deed, as a seisin in law is not sufficient.

Sections of the dower act.

(g) See sec 4. (h) See sec. 5. (i) See sec, 6.

(k) See sec. 8. (l) See sec. 9. (m) See sec.10.

(n) See sec. 11. (j) See sec. 7. And by sec. 12 legacies given in bar of dower, are still entitled to preference.

(o) Lit. s. 35.

Marriage.

(p) To entitle the husband to curtesy, (which is defined to be the estate or the husband in the lands of the wife,) there must be a valid and canonical marriage, and the husband must have issue by his wife born alive, during coverture. Curtesy will arise on an equitable estate as well as on a legal estate. Co. Lit 29. [A]

(q) The inheritance must be such, that the issue of the wife by the hus-

band may by possibility succeed to the estate as heirs.

Seisin.

(r) Either the wife or the husband in her right must be actually seized of the estate; a seizin in law will not suffice, except when the nature of the thing will not admit of a seizin in fact, as in the case of advowsons, unless a vacancy occurs during coverture. See ii. 3 Prest. on Ab. 380-1.

A tenant by curtesy is liable to an action for Action for waste and to forfeiture.

A freehold may arise by means of an entry on Freehold inland under powers of distress, and entry made, on terests. a grant of an annuity in fee, by virtue of a conveyance, operating under the statute of uses; that is, a conditional inheritance determinable upon payment of the rent; and, until entry made, the right of entry is in the nature of a contingent or future use, to arise on non-payment of the rent, and will pass with a grant of the rent.(s)

AN ESTATE for years, as also the estates by of chattles elegit; at will; and at sufferance, are called chat-real. tels real, usually termed interests in lands or tenements, being lesser in quantity and quality of

estate than those of freehold.

A TENANT for years is, when lands or tenements Tenancy for are given, granted, or demised to a man for years, years. or for term of years, or for a longer or shorter period, and may be considered as a contract or agreement between a lessor and lessee, (t) for the possession and profits of lands and tenements for a certain rent and recompense. If the term (u) be granted to begin at a future day, it is called interesse termini.(v) This estate is transmissible to the personal representatives of the tenant, who are entitled to it upon the same terms in regard to the landlord as the original lessee.

Tenant for years as well as a tenant for life is Incidents to entitled to estovers, and, when the term is limited,

(s) See Havergill v. Hare, Cro. Jac. 510.

(t) Every tenancy of a definite duration may be considered as a Term. term, and of the nature of a term of years, though for a less period than a year. Lit. 67. See Doe v. Rosse, Barn. and Ald. 766.

An estate for years may be created without deed even by parol, pro-How created vided the agreement be reduced to writing, and entry made on the lands; but, if the lessor have only a reversion, then a deed will be requisite, for a reversion convert be nessed without grant and a grant requires a deed reversion cannot be passed without grant, and a grant requires a deed. See 2. Prest. on Abs. 1, 19, 80. In the creation of a term for years, the commencement and duration of the term must be definitively marked, commencement and duration of the term must be dennitively marked, either in express terms or by manifest construction. Ib. 20—(see leases.)

Doe v. Porter, 3. T. R. 13. Rex v. Stone, 6. T. R. 298.

(v) The word term, signifies commonly the limitation of time or estate;
as a lease for term of life or years. Brac. lib. 2.

(r) A term of years must be perfected by an actual entry on the land, Entry on and, until then, it is called an interesse termini, or an interest in a term. land.

a tenancy for years.

to determine on the happening of a collateral event, the lessee or his personal representatives, are, when it so determines, entitled to emblements; and, with respect to waste and forfeiture, the same doctrine is applicable to a tenant for years, as a tenant for life.

Tenant by elegit.

A TENANT by elegit is, when a man has recovered a debt or sum of money by judgment in a court of record, he may choose to have execution of a moiety of the debtor's lands, which by a writ is delivered to him by the sheriff, at an extended yearly value set by a jury, to hold the same till the debt be paid; and then, because so much a year will pay the debt in a certain time, he is considered a tenant for years, and his interest is transmissible to his personal representatives.

Estate at will.

A TENANCY at will originates by the mutual agreement and depending upon the concurrence of both parties, and is, where lands or tenements are let by one man to another, to hold during their mutual will and pleasure. (w) This tenure, when the rent is payable yearly or half yearly, is generally understood as a tenancy from year to year.

Emblements.

Emblements are attached to this estate, similar to all other particular estates of uncertain duration, so far as relates to the purposes of husbandry.

An estate at sufferance.

A TENANT at sufferance is where a termor for years continues in possession after his term is ended, or, where a person who once had lawful possession of land, afterwards keeps possession without any title at all.(x)

The lowest can subsist.

This tenancy is the lowest which can subsist, it tenancy that cannot originate in the agreement of the parties, the law presuming that the possession is continued by the permission of the person entitled to it; the payment of an annual rent will in this estate, as also in a tenancy at will, generally raises a constructive tenancy from year to year. (y)

> (w) 2 Black. ch. 9. p. 145. (x) Co. Lit 57, 6. 2 Bl. ch. 9. p. 150. (y) 2 Barn. and Cress. 100. 4 Com. Dig. 66. Cruise Dig. 287.
> Rolle's Ab. 861.

+ Ridination

TENANCY by copy of court roll, depends entirely Tenant by upon custom. As to copyhold estates, no precise copy of court rule can be laid down respecting their descent or their particular incidents. In general they descend according to the rules and maxims of the common law;(z) unless in particular manors, where there are contrary ancient customs, which customs are preserved or evidenced by the records of the court rolls of each respective manor, handed down to posterity by immemorial usage.

The two main principles seem to be, that the Main prinlands should be parcel of and situate within the ciples of manor under which they are holden; and, secondly, that they have been demised or demisable by copy of court roll immemorially, for immemorial custom is the life of all tenures by copy, so that no new copyhold, strictly speaking, can be granted at this day.

As to the conveyance of copyhold lands from one Conveyance man to another, the method is generally by sur- of copyhold. render, which is the yielding up of the estate into the hands of the lord for such purposes, as in the surrender are expressed as to a purchaser or mortgagee; (a) and, it is said that the word surrender is of such efficacy, that no other will supply the want of it, and care must be taken to observe the custom in making the surrender; in some courts a rod is used, in others a glove, &c. If the surrender be made out of court, then at the next or some sub-

(2) See Blk. v. 2 c. 3 p. 97, (the stat. 3 and 4 W. IV. c. 106, for amending Inheritance the law of inheritance, whereby the half-blood is admitted, &c. applies to copybold lands.)

(s) It was requisite prior to the statute 55. Geo. 3. (but now repealed by the act 1. Vict. c. 26.) that a surrender should be made to the use of the last 1 Vict. c. 26. will and testament of the surrenderee; but, such ceremony being so frequently omitted, and application to the Court of Chancery so often made, it was at length deemed expedient to pass this statute, to rectify such unissions, and to render unnecessary such surrenders; but, by the act of 1 Vict. c. 26. for amending the law in respect to wills, provides, that the power thereby given to devise all real and personal property, shall extend to all real estate of the nature of customary freehold or tenant light, or customary or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding but being entitled as heir devisee or otherwise to be admitted thereto, be shall not have been admitted thereto, or notwithstanding that the time in consequence of the want of custom to devise or surrender to the the of a will or otherwise, could not at law have been disposed of by will if this act had not been made. See sec. 3. And see note (c) to p. 6.

Copyhold.

sequent court, the jury or homage will present it, and, immediately upon such surrender the court, or upon presentment of a surrender made out of court, the lord by his steward, grants the same land again to cestui que use, or the surrenderee, and thereupon admits him tenant according to the form and effect of the surrender, upon which, he pays the fine(b) to the lord, and takes the oath of fealty.(c)

Coparce-

TENANCY in coparcenery is of two kinds; parceners at the common law, and parceners by custom.

At common law.

Parcenery at common law is where a man and woman is seized of lands or tenements in fee simple or fee tail, and hath no other issue but daughters, and dies, the tenements descend to the daughters equally as co-heirs, and they shall enjoy every one an equal part thereof as tenants in parcenery, and are, as it were, one heir to their ancestor; or, if a man seized of lands die without issue, and the tenements descend to his sisters, or if he has no sisters, and it descends to his aunts, they will be co-heirs or parceners.

By the custom of Kent.

Parceners by custom arises only in Kent, and is called tenure in gavelkind, and it is a right claimed by the men of Kent as remaining to them uncon-

Fees on admission.

(b) The lord of a manor is entitled to separate fees on the admission of copyhold tenants in common, Everest v. Glyn, 6 Taunt. 425.; but see Rex v. the lord of the manor of Bonsal, 3 Barn and Cress, 173, as to the admission of coparceners upon payment of one set of fees. Joint tenants pay one fine only on admission, I Watk. Cop. 298. One joint tenant or coparcener of copyhold estate, may release by deed, without surrender to his companion; but, one of tenants in common cannot, as they have each a separate tenement. And see D. and R. 825.

Surrenderee

(c) Until the admission of the surrenderee, the lord considers the surrenderor as his tenant, who is entitled to receive the profits of his land to his own use, and must discharge all services due to the lord, yet the interest remains in him, not absolutely, but sub modo; for he can neither sell nor charge the land with any subsequent incumbrance, (the admission being retrospective to the surrender,) indeed, no manner of legal interest is in the nominee, till admittance, for if he enters, he becomes a trespasser, and cannot maintain an ejectment; but, when copyhold land descends to the heir, he is tenant by copy, (as to every one but the lord,) immediately on the death of the ancestor, and he may enter upon the land and take the profits before admission; he may also maintain an ejectment, or do any other act as effectual to all intents and purposes as he could after admittance, a very few instances excepted. See Watk. Gilb. Ten. N. 75 and 95, p. 415 and 436. 1 T. R. 600. 4 Burr. 1952.

It appears that a copyholder may take the necessary estovers or botes on his copyhold, without a special custom: but, to enable him to take them on other lands, a special custom must be shewn. 4 Co. Rep. 31. b.

quered, and it is thus:—if a man be seised in fee simple or fee tail in lands or tenements of the custom, and tenure of gavelkind, and hath issue, divers sons, and dieth, all the sons(d) shall be coheirs, and equally inherit those lands and tenements, and may make partition, as females do, by deed or writ, and divide as in the case of daughters at common law.(e)

JOINT TENANCY arises where several persons come Joint tento hold lands or tenements jointly by one title, (f) ante. as where a man being seised of lands doth legally convey the same to three, four, or more to hold to them and their heirs, or to hold to them for the term of their lives, or for another's life, and they become seised by virtue of such conveyance, they are said to be joint-tenants.

The rule of law is, that when lands are conveyed to two or more persons without any modifying or

disjunctive words, they take as joint tenants.

The nature of joint tenants is, that the whole estate shall go to the survivor or survivors.(g)

Either of the joint tenants may sever the tenancy by conveying his part or portion to a stranger.

(d) Or brothers, uncles, &c.—The stat. 8 and 4, W. IV. c. 106, applies

(d) Or brothers, uncles, &c.—The stat. 8 and 2, w. 1v. c. 1ve, applies to this tenure (see n. (s) to p. 11.)

(c) The methods of making partition are as follows:—First, where Methods of they agree to divide the lands into equal parts in severalty, and that making particles shall have such determinate part; the second is when they agree tition. To choose some friend to make partition between them, and then the sisters shall choose each of them her part, according to their seniority of ages or otherwise, as shall be agreed; the third method is, when the cidest divides, and then she shall choose last, for the rule of law is, cujus at divisio alterius est electio; the fourth method is, when the sisters are to east lots for their shares, and these are the methods by consent. scree to east lots for their shares, and these are the methods by consent. That by compulsion is, when one or more sue out a writ of partition against the others, whereupon the sheriff shall go to the lands and make partition thereof by the verdiet of a jury then impannelled, and assign to each of the parceners her part in severalty, Lit. sec. 243.; but, the most usual mode of compulsion is, by a decree of a court of equity. See the sets, 31 Hen. VIII. c. 1. 32 Hen. VIII. c. 32. 8 and 9 W. III. c. 31. Jand 4 Ann, c. 18. and 7 Ann, c 18. as to partition.

(f) There is this difference between joint tenants and tenants in par. Difference mary, for if there be three so-partners and one hath issue and dieth in joint tenbefore there be any partition made, that part which belonged to her that ants, and is deceased, shall descend to her issue; and if such parceners die without tenants in

s issue, her part shall descend not survive to her co-heirs.

(g) By the act of 3 and 4, W. IV. c. 27, s 12, for the limitation of actions Limitation and suits, possession of one coparcener, joint tenant, or tenant in com- act, 3 and 4 mon, shall not be the possession of the others, so as to prevent the opera- W. IV.

Tenants in common.

TENANTS in common are such as hold land by distinct titles, or by one title and several rights; and as joint tenants have one joint freehold, so tenants in common law have separate freeholds; that is, they hold the land, pro indiviso, whether it be fee simple, fee tail, or for a term of life.(h)

Tenants in common are considered as having separate inheritances, as distinct from each other as several tenants. Therefore, a lease by two tenants in common, operates as a distinct lease as to each

of them.(i)

()f particular estates.

ESTATES in fee may be split into several lesser estates, the first of which is called the particular estate, and those which follow the remainders. (j) The particular estate is always in possession, or confers a right to the possession, and must consequently be created by livery of seisin or its equivalent, unless the remainders give chattel interests merely; in which case, entry will be requisite to convert the inchoate interests of the termors into estates.(k)

Remainders

REMAINDERS are of two kinds, vested or contin-A vested remainder gives an immediate estate which cannot afterwards be defeated. remainder-man has as certain an interest in the land as the particular tenant, the only difference between them is, that the latter has the addition of possession.(1)

How

A vested remainder may be distinguished by its

Example.

(h) Inst. 188; 2 Lit. abr. 559.
(i) Co. Lit. 45, 200.
(j) The particular estate and remainders make but one whole, and are, in fact, but the component parts of one fee.
(k) If a tenant in fee grants to A. for years, with remainder to B. for life, though livery of seisin be not essential to, and would, indeed, destroy the term for years, yet to perfect the remainder, livery must be given to A., which passes the freehold immediately to B. The term is for a moment extinguished, but as the freehold is instantly passed to B., it as instantly revives.

Livery and scisiu to termor.

If an estate be limited to one for years, on condition that he shall have the see on performing some particular act within a specified time, livery of seisin must be given to the termor; and as it cannot pass out of him into a remainder, (there being none,) the term will be extinguished, and he will have an estate in fee, subject to be defeated on non-performance of the act required; but, the term will revive after the condition broken, if it be not then expired.—See Prest. on Abst. vol. ii. p. 90, 116.

Example.

(I) If lands be limited to A. for life, with remainder to B. in fee, A. has the particular estate for life, and B. a vested remainder in fee.

capability of taking effect in possession immediately distinupon the determination of the particular estate.

A contingent remainder is a remainder limited, contingent so as to depend on an event or condition which may remainder. never happen, or be performed till after the deter-

mination of the previous estate.

The infallible rule of distinction between a Distinction vested and contingent remainder is this: suppose between a vested and the particular estate determined, can the re-contingent mainder by the terms of its limitation, take effect remainder. in possession? if it can, the remainder is vested—if

not, it is contingent.(m)

A REVERSION is the ultimate remainder in fee, of a reverwhich the grantor or testator limits to himself, or which, being undisposed of, results to him by operation of law, as when a person hath an estate in any hereditament, and grants or assures the same hereditament for a less estate or interest to any other person, then the estate which continues in the grantor is called a reversion.(n) One principal difference between a remainder and reversion is, that to the latter belongs the actual or supposed fruits of the seignory, whence it follows, that if a remainder man grants an estate commensurate with the prior interest in the land, nothing passes; but, if a reversioner makes such a grant, the fruits of seignory will pass, and the conveyance is therefore good.(0)

(m) Thus, if a limitation be to A. for life, and if B., be living at his Limitation. death, then to B. in fee, this gives to B. a contingent remainder in fee, dependent on the event of his surviving A. So the common and ordinary form of limitation to A. for life, remainder to his first and other sons in tail, will give to the sons contingent remainders in tail, if they are not in existence at the time of the grant; but if they are then born, or as soon afterwards as they are born, they take vested remainders in tail.—2 Prest. on Abst. 147. See Ferne on Contingent Remainders.

(a) For instance: If A. seised in see, gives the land to B., and the heirs Example. male of his body, B. is seised in tail, and the reversion in see expectant upon that estate tail (that is, when the tenant in tail shall die without heirs of his body) will belong to A. the donor. But if the ultimate fee be limited to trustees in trust for the grantor or his heirs, this is not the old

reversion, but a new acquisition, and the heir will take as purchaser.—

2 Prest, on Abst. 83; and see 3 and 4 W. IV., c. 106, s. 3.

(o) As if A. grant to B. for life, with remainder to C in fee, and C. Example. grant to D. for the life of B., this grant is nugatory. But if a tenant in fee grant to A. for life, and afterwards grant to B. for the life of A., this latter grant will be valid, and confer on B. a remainder, which will fall into possession on the forfeiture or merger of the prior estate in A.—See 2 Prest, on Abst. 86.

AFFIDAVITS.

(1.)

Common Form of the Affidavit of Service of Declaration in Ejectment.(p)

In the Q. B. (C. P., or Exch. of Pleas.)

Between(q) John Doe, on the demise of plaintiff,

and

Richard Roe.

defendant.

A. B., of, &c., maketh oath and saith, that he, Affidavit of the service of ejectment this deponent, did on, &c., personally serve C. D., tenant in possession(r) of the premises in the declaration of ejectment hereunto annexed mentioned, [or (if he be not tenant of the whole) some part thereof,] with a true copy of the said declaration, and of the notice thereunder written, hereunto annexed; and that he, this deponent, did, at the same time, read over the said notice to the said C. D., and explained to him the intent and meaning of such service; (s) (or thus, and this deponent

ejector.

How to ob. (p) In order to obtain judgment against the casual ejector, an affidavit tain judgmust be made of the service of the declaration as in the above form, and mentagaiust annexed to the same, upon which a rule for judgment (in default of apthe casual pearance) may be moved for; but, if the circumstances of the case are special, it is usual to move, in the first instance, for a rule to show cause why the service mentioned in the affidavit should not be deemed good service. See Gulliver v. Wagstaff, l W. B. Blk. 317. (See "Ejectment," for other cases.) (q) The affidavit must be entitled with the name of the casual ejector. 2 Chitt 181.

How enti-Hed.

in general.

As to service

(r) If no peculiar circumstances take the case out of the general rule, it must state, that the declaration was delivered to the tenant in possession, or his wife, &c., and, that the notice thereto was read and explained at the time of the delivery, or generally, that the tenant was informed of the intent and meaning of the service. See Nos. 1, 2, 3, and 4.

As to an acknowledgment by tenant.

(s) If the affidavit only state that the notice was read, the service will not be sufficient. Doe d. Whitfield v. Roe. K. B. T. T. 1815; but, if the tenant acknowledges that he understands the meaning and intention of the service, it will be good without any such reading or explanation, Doe d. Quintin v. Roe, Ad. 215, and see 2 Chit. 186. at the same time acquainted the said C. D. of the intent and meaning of the said declaration and notice.)

(2).

Affidavit of the Service of Ejectment on several On several demises. demises, where there are several tenants.

In the Q. B. (C. P. or Exch. of Pleas.)

Between John Doe, on the several demises of A. B. and C. D. plaintiff,

and

E. F.

defendant.

G. H., of, &c., maketh oath and saith, that he, Several tenthis deponent, did on, &c., personally serve J. K., and L. M., tenants in possession(t) of the premises in the declaration of ejectment hereunto annexed mentioned(u) (or of some part thereof) with the said declaration, and the notice hereunder written, by delivering a true copy of the said declaration and notice to each of them, the said J. K., and L. M. (and if the notice was not directed to all the tenants, say "except that the said notice was directed to each of them, the said J. K. and L. M., separately"); and this deponent, at the same time, read over the said notice to each of them, the said J. K. and L. M., and explained to them respectively the intent and meaning of such service (or generally, that "this deponent, at the same time, acquainted each of them, the said J. K. and L. M., of the intent and meaning of the said declaration and notice.")

⁽t) The affidavit must be positive that the person served, was the tenant in possession, Doe v. Roe, I Chitt, 574, or, that he acknowledged himself to be so, Goodtitle v. Davis, I Barnard. 429.

(a) If several persons be in possession of the disputed premises, and separate declarations in ejectment be served upon them, one affidavit of the copy of one declaration is sufficient. the service upon all annexed to the copy of one declaration is sufficient, provided one action of ejectment only be intended, but if the ejectments are made several, then separate affidavits of the several services, annexed to espice of the several declarations respectively.

(3.)

Affidavit of Service of Declaration of Ejectment on the Wife.(v).

Between, &c. In the, &c.

Service on wife of tenant

A. B., of, &c., clerk to C. D., of, &c., attorney for the lessor (or lessors) of the plaintiff in this case, maketh oath and saith, that he did on, &c., serve E. F., tenant in possession of the premises in the declaration of ejectment hereunto annexed mentioned, with a true copy of the said declaration, and of the notice thereunder written, by delivering the same to the wife of the said E. F., upon the premises aforesaid (or at the dwelling-house and place of residence of the said E. F.); and this deponent, at the same time, read over to the said wife of the said E. F., the said notice, and explained to her the intent and meaning of the said declaration and notice, and of the service thereof.

Affidavit of Service of Declaration in Ejectment on one Tenant, and the Wife of another.(w)

Between, &c. In the, &c.

Service on wife of

A. B., of, &c., maketh oath and saith, that he did one tenant, on, &c., personally serve C. D., tenant in possession of part of the premises in the declaration of another of ejectment hereunto annexed mentioned, with a true copy of the said declaration, and of the notice thereunder written, and, at the same time, explained to him the meaning of the said declaration and notice, and of the service thereof; and this deponent further saith, that he did, on the same day, also

⁽v) If the service be upon the wife, it must be stated that the service was on the premises, or at the husband's house, Doe d. Morland v. Bayliss, 6, T. R. 765, or, that the husband and wife were living together. Jenny d. Preston v. Cutts, 1 New R. 308; and see Doe d. Badham v. Roe, 2 B. and P. 55.

⁽w) If the service be on the child or servant of the tenant, the affidavit must state, that the service was acknowledged by the tenant before the essoign day of the term, Roe d. Hambrook v. Doe, 14 East. 441. 1 Chit. 118. But see Smith d. Stourton v. Hurst, I H. Blk. 646.

serve E. F., tenant in possession of other part (or residue) of the premises in the said declaration, and notice thereunder written, by delivering the same to, and leaving it with, L. F., the wife of the said E. F., at the dwelling-house of the said E. F., being a parcel of the premises in the said declaration mentioned; and this deponent, at the same time, read over the notice thereunder written to the said E. F., and explained to her the intent and meaning of such service.

(5.)

Affidavit of Service of Declaration in Ejectment, when on any other of the family.

Between, &c. In the, &c.

A. B., of, &c., maketh oath and saith, that he Service on did on, &c., serve C. D., tenant, &c., by delivering the family. the same to the son of the said C. D., upon the premises aforesaid; and that he did, at the same time, read over to the said son of the said C. D., the said notice, and explained to him the intent and meaning of the said declaration and notice, and of the service thereof; and this deponent further saith, Acknow-ledgment by that afterwards, on the — day of, &c., this de-tenant. ponent saw the said C. D., and conversed with him upon the subject of this action, when the said C. D. told this deponent that he had received the copy of the declaration and notice as aforesaid, on the day of, &c. after such service.

(6.)

Affidavit of Service of Ejectment on Stat. 4, Geo. II. c. 28 (premises being untenanted).(x)

In the, &c.

Between John Doe, (on the demise of A. B. plaintiff,

and

Richard Roe.

defendant.

⁽z) For an explanation of this affidavit, see head "Ejectment."

Service under the c. 28.

Of the amount dus for rent.

A. B., of, &c., (lessor of the plaintiff in this cause under the stat. 4 G. II. above-mentioned) and C. D., of, &c. (if the attorney, say "attorney for the said lessor of the plaintiff,") severally make oath and say; and first, this deponent, C. D., for himself, saith, that he did on. of affixing &c., affix a copy of the declaration in ejectment declaration upon a noto- hereto annexed, and the notice thereunder written, rious part of upon the door of the messuage in the said declarathe premises tion mentioned, (or in case the ejectment is not for the recovery of a messuage, insert "upon, &c. being a notorious place of the lands, tenements, or hereditaments comprised in the said declaration in ejectment,") there being no tenant then in actual possession thereof; and this deponent, A. B., for himself, saith, that before such copy of the said declaration in ejectment was so fixed as aforesaid, there was due to him, this deponent, as landlord of such messuage, (or "lands, tenements, or hereditaments,") with the appurtenances, from E. F., the tenant thereof, the sum of £ —— for half a year's rent, upon and by virtue of a lease, bearing date, &c. and made between, &c., and that no sufficient distress was then to be found upon the said messuage, (or "lands, tenements, or hereditaments,") with the appurtenances, countervailing the arrears of rent onhe power then due to this deponent; and this deponent to re-enter. further saith, that, at the time of affixing the copy of the said declaration in ejectment as aforesaid, he had power to re-enter upon the said messuage, (or "lands, tenements, or hereditaments,") with the appurtenances, by virtue of the said lease, for the non-payment of rent, so in arrear as aforesaid.(y)

In the &c. Between &c.

no sufficient distress was then to be found upon the said premises, countervailing the arrears of rent then due, and owing from the said J. B. to this deponent for the same. And the said A. B. further saith, that as

⁽y) When the usual service can be made, the affidavit will be in the following form.

A. B. of &c. lessor, of the above named plaintiff, and C. D. clerk to Form of affi- E. F. of &c. gentleman, attorney for the said lessor of the plaintiff davit when severally make oath and say; and first, this deponent C. D. for himself the usual saith, that he did on &c. (state the service as in the common form.) service can And this deponent A. B. for himself saith, that before the said declaration be effected. in ejectment was served as aforesaid, there was due to this deponent, as landlord of the said premises, from the said J. B. the tenant thereof, the sum of &c, for half a years's rent of the premises for which this action is brought, under and by virtue of a certain indenture of lease; and, that

(7.)

Affidavit required by the Act 1 Geo. IV., c. 87, s.1, in Addition to the usual Affidavit of Service of Declaration in Ejectment, to ground the Motion for Bail.(z)

In the Q. B. (C.P., or Exch.)

Between John Doe, on the demise of plaintiff,

and

Richard Roe,

defendant.

A.B., of, &c., (lessor of the plaintiff above named,) Service C. D., of, &c., (attorney for the said A. B.,) and under the act 1 G. IV. E. F., of, &c., (clerk to the said A. B.,) severally a 87, a. 1. make oath and say; and first, this deponent, A.B., of the pre-for himself, saith, that this action is brought for the action is recovery of a farm and premises, with the appur-brought for. tenances, situate in the parish of, &c., in the county of, &c., formerly held and occupied by G. H., as Howheldby tenant thereof (a) to this deponent, under and by tenant virtue of a certain indenture of lease, produced to this deponent, at the time of swearing this, his affidavit, for a certain time, which expired on, &c.; and that the said G. H. has been possessed of, and

the time of serving the said declaration as aforesaid, he, this deponent had power to re-enter upon the said premises, by virtue of the said lease, for non-payment of the rent so in arrear as aforesaid.

(x) This act enables the landlord in the cases therein mentioned, (see the head Ejectment,) instead of moving for judgment in the ordinary way, to move for a rule to show cause "why the party should not undertake upon being admitted defendant, besides entering into the common rule and giving the common undertaking, to give the plaintiff judgment, in case he obtain a marriage of the term next preceding the trial and why he should chtain a verdict, of the term next preceding the trial, and why he should not enter into a recognizance by himself, and two sufficient sureties in a mem to be named by the court, to pay the costs and damages, which may be recovered in the action.

resourced in the action."

(a) If under an agreement and not a lease (as the act only applies to If the preleases or agreements in writing between landlord and tenant) add here, in mises are case it be from year to year, "from year to year," (or, as the case may be,) held under to this deponent, under and by virtue of the agreement in writing, produced to this deponent at the time of swearing this, his affidavit; and, ment. that the said G. H. has been possessed of and enjoyed the said, &c., under and by virtue of the said agreement, as tenant from year to year as aforesaid, (or, as the case may be,) for several years last past, and until the — day of, &c., when his tenancy, as such tenant from year to year was determined by a certain notice to quit, given to (or by, as the case may be,) the said G. H.; and, that the said G. H. hath continued from thence bitherto to hold and occupy, and still doth hold and occupy the wate. (Or state any under-letting, and the possession of the under tenant.) wae. (Or state any under-letting, and the possession of the under tenant.)

enjoyed the said messuage, farm, and premises,

Of the exelease.

with the appurtenances, under and by virtue of the said lease, from the commencement of the term therein mentioned, until the expiration thereof as aforesaid, and hath continued from thence hitherto to hold and occupy, and still doth hold and occupy, cution of the the same, (if an under-tenant has been let into possession of the premises, state the fact); and this deponent, C. D., for himself, saith, that on or about the —— day of, &c., this deponent was present and did see the said G. H. duly sign, (b) seal, deliver, and execute the said lease produced to this deponent, also at the time of swearing this, his affidavit, and that the name G. H. thereunto subscribed, as party thereto, is of the hand-writing of the said G. H., and that the name C. D. thereunto subscribed, as witness of the execution thereof, is of the proper hand-writing of this deponent; and this deponent, E. F., for himself, saith, that he did on, &c., serve the said G. H., with a demand in writing, of the possession of the premises in question, by leaving the same for him with a servant of the said G. H., at his dwelling-house and usual place of abode, situate, &c., which said demand was directed to Mr. G.H., and was in the words and terms following, (here copy the words of the demand,)(c) and signed "A. B.;" and this deponent, A.B., further saith, that(d) he caused the said G.H. to be served with the said demand in writing as aforesaid, in order that he, this deponent, might obtain possession of the premises aforesaid; (e) but the said premises have not nor hath any part thereof been delivered up to this deponent, or to any person in his behalf; and this deponent further saith, that he did on, &c., personally serve the said G. H., the

Agreement.

From year to year. If yearly tenancy.

⁽b) If an agreement only, "duly sign the said agreement."
(c) See this form of demand under the head "notice."
(d) If from year to year add, "that the year of the tenancy aforesaid ended on the ——day of, &c., and that he caused," (as above).
(e) If tenant from year to year add, "but although this deponent hath since made several applications to the said G. H. for possession of the same, yet the said premises have not, nor hath any part thereof, been delivered up, &c. (us above).

said tenant in possession of the said premises, and mentioned in the declaration of ejectment heremto annexed, with a true copy of the said declaration, (f) and of the notice thereunder written, and, at the same time, explained to him the intent and meaning of the said declaration and notice, and of the service thereof. (q)

(8.)

Affidavit of the due taking of the Recognizance under the Act 1 Geo. IV. c. 87.

In the Q. B. (C. P. or Exch.)

Between John Doe, on the demise of A. B. plaintiff. plaintiff, and

C. D.

defendant.

J. K., of, &c., maketh oath and saith, that the Of the due taking of the recognizance(h) hereunto annexed was duly ac-recognizance(h) hereunto annexed was duly ac-recognizance(h) hereunto annexed was duly ac-recognizance who will be above-named defendant, G. H., zance under the act 1 G. L. M., of, &c., and O. P., of, &c., the sureties IV.c. 87. therein mentioned, before R. S., gent., the commissioner who took the same in this deponent's presence, this —— day of, &c.

(9.)

The Affidavit of Justification by the Sureties is as follows.

In the Q. B. (C. P. or Exch.)

Between John Doe, on the demise of A. B. plaintiff,

and

C. D.

defendant.

(This will be according to any of the preceeding forms as may be

(f) There must be an exhibit to this affidavit on the lease or agreement, Exhibit. referred to in the affidavit, after the following manner, to be signed by the commissioner taking the affidavit, "this is the lease (or, agreement,) referred to in the affidavit of A. B., C. D. and E. F. sworn before me, this day of, &cc."

(4) For the form of the recognizance, see head "recognizance."

Form of affijustification.

L. M., of, &c., and N. O., of, &c., sureties in davit of the this cause for the above-named defendant, severally make oath and say; and first, this deponent, L. M., for himself, saith, that he is a housekeeper (or freeholder) residing at, &c., aforesaid, and that he, this deponent, is worth the sum of £ ---- over and above what will pay his just debts; and this deponent, N. O., for himself, saith, that, &c. (similar to the first.)

(10.)

Affidavit to move for Judgment in Ejectment under the Stat. 1, W. IV. c. 70.(i)

In the Q. B. (C. P. or Exch.)

Between John Doe, on the demise of plaintiff,

and

Richard Roe.

defendant.

Form of affidavit for

A. B., of, &c. (the above-named lessor of the judgment in plaintiff) and C. D., of, &c., severally make oath ejectment, and say: and first, this depondent, in according to stat. 1. w. self, saith, that G. H., the tenant in possession of the declaration hereunto annexed mentioned, held the said premises as tenant to this deponent (state the tenancy); and this deponent further saith, that the said tenancy expired on, &c., by, &c. (state the expiration of the tenancy or how otherwise); and this deponent further saith, that the right of entry upon the said premises accrued to this deponent upon the —— day of, &c. (state the right of entry); and this deponent lastly saith, that the said G. H. still wrongfully witholds the said premises from this deponent; and this deponent, C. D., for himself, saith, that, &c. (here state the service of the declaration in ejectment according to the usual forms.)

⁽i) In the proceedings upon this statute, it must be shewn in addition to the usual affidavit of service, that the relation of landlord and tenant subsisted between the lessor and the party in possession; and, that the interest of the latter in the premises, expired within ten days next before the service of the declaration.

(11.)

Affidavit for Rule for Judgment on Proceedings in Ejectment on a vacant Possession.

In the Q. B. (C. P. or Exch.)

Between A. B., on the demise of C. D. plaintiff. plaintiff,

and

J. K.

defendant.

E. F., of, &c., attorney for the above-named Form of affiplaintiff, (j) maketh oath and saith, that on, &c., davit forrule this deponent was present, and did see the letter of on a vacant attorney hereunto annexed duly signed, sealed, de-possession. livered and executed by G. H., of, &c., and that the name G. H., thereunto subscribed, is of the hand-writing of the said G. H., and the name E. F., thereunto subscribed, as witness thereof, is of the hand-writing of this deponent; (k) and, this of the per. deponent further saith, that afterwards on, &c. he, son named in the letter this deponent was present and did see L. M. in the of attorney said letter of attorney named, enter into and take taking possion. possession of the messuages and premises in the said letter of attorney mentioned, by entering upon the threshold of the outer-door thereof, and putting his finger into the key-hole of the said door, the said messuage then being then locked up and uninhabited, so that no other entry thereon could be made, nor any possession thereof taken without force; and, this deponent further saith, that he did And of the on the same day, see the above named G. H. after the lease such entry made, and whilst he stood on the threshold and delivery of the said door, duly sign and seal the lease here-

(f) See the form of this letter of attorney, under the head, "power of

(k) If the witness to the facts in the affidavit to move for judgment, as Separate afto entering and taking possession, &c. did not see the lessor of the plain- fidavit as to till sign the letter of attorney, a separate affidavit may be made—first, as letter of attorney, thus: R. F. of, &c. maketh torney.

and saith, that he was present and did see A. B. of, &c. named in the letter of attorney, hereunto annexed, duly sign, seal, and deliver the mid letter of attorney; and, the affidavit to move for judgment, will be headed as above, in the cause, and the person seeing the entry made, will make the affidavit, "that he did on, &c. see J. K. &c. (as above. In the Common Pleas no affidavit is required.)

4 |

take posses-

removal of

party.

unto annexed(l) in the name of the said C.D., and, as his act and deed deliver the same unto the said And of see- A. B. the plaintiff above named; and, that after the ingthe party said lease was so executed, this deponent did see sion by vir. the said A. B. take possession of the said messuage tue of the by virtue of the said lease, by entering upon the said lease. threshold of the said outer-door and putting his finger into the key-hole of the said door, the said messuage being then locked up and uninhabited, so that no other entry could be made thereon, save as aforesaid; and, that immediately afterwards the And of the said E. F. the defendant, came and removed the said A. B. from the said door, and put his foot on the threshold thereof, whereupon this deponent did on the day and year aforesaid, deliver to the said defendant E. F. who still continued upon the said threshold, a true copy of the declaration of ejectment, and notice thereunder written hereto annexed.

(12)

Affidavit of the due Execution of a Submission to Arbitration.

In the, &c.

Between, &c. (if an action has been commenced) or, in the matter of an arbitration between A. B. and C. D.

Of the exeinstrument of submission to arbitration.

E. F. of, &c. maketh oath and saith, that he was cution of the present at the time of the execution of the bond or obligation, (or other deed as the case may be, (m) hereunto annexed by A. B. of, &c. therein mentioned, and did see him duly sign, seal, and as his act and deed deliver the said bond or obligation, with the condition thereunder written; and, that the

(1) See the form of this lease, under the head "leases."
(m) Or thus, if it be of an agreement for reference, "that he was preof the execution of an agreement such agreement; and that the names 'A. B.' and agreement 'C. D.' at the foot thereof, are respectively of the proper hands-writing of the submission of the sub for submis- the said A. B. and C. D., and, that the name E. F. subscribed to the said agreement as the witnesses to the signing of the same, is of the proper hand-writing of this deponent." name "A. B." set and subscribed thereto, is of the proper hand-writing of the said A. B.; and, that the name "E. F." set and subscribed as the witness thereto, is of the proper hand-writing of this deponent.(n)

(13)

Affidavit of the Service of a Consent Rule, with an Allocatur, and of demanding Costs.

In the, &c.

E m above.

Between John Doe, on the demise of plaintiff,

and

Richard Roe,

defendant.

R. S. of, &c. the above-named lessor of the service of plaintiff, maketh oath and saith, that he did on, &c. consent, rule, &c. personally serve G. H. in the annexed rule named, with a true copy of the rule, and the master's (or, if in C. P. pronothonotary's) allocatur thereon hereunto annexed, and, at the same time showed him the said original rule and allocatur; and, that be, this deponent then demanded of him, the said G. H. the costs allowed by the master, (or, prothonotary,) upon the said rule, but, that the said G. H. did not then or at any time since, pay the same to this deponent or to any person on his behalf, and, that the same now remains due and unpaid to this deponent. (0)

⁽a) If the affidavit be of the signature of an enlargement, "that he was ()f an enternant on, &c. and did see G. H. the arbitrator in this cause, (or matter,) largement of which enlargement is indorsed on the agreement (or order) of reference, which is hereunto annexed; and, that the name G. H. signed to such enlargement, is of the proper hand-writing of the said G. H.; and, the name E. F. appearing as the witness to such signature, is of the proper hand-writing of this deponent."

(c) If the costs he payable by lessor of plaintiff, the affidavit will run When

⁽e) If the costs be payable by lessor of plaintiff, the affidavit will run When costs thus, after the heading of the cause: "G. H. of, &c. maketh oath and are payable with that he is the person named in the rule hereunto annexed; that he, by lessor of the deponent did on, &c. personally serve R. S. the lessor of the plaintiff plaintiff. we named, with a true copy of the said rule, and of the master's (or if C. P. Prothonotary's) allocatur thereon, and, at the same time showed,

(14)

Affidavit of the due Execution of Deeds of Lease and Re-lease.

subscribed his name upon the back of each of the

A. B. of, &c. maketh oath and saith, that he was present at the execution of the indentures hereunto annexed, the one thereof bearing date on or about, &c., and, the other thereof bearing date on or about, &c. next thereafter, the said last mentioned indenture being made or expressed to be made between, &c., and, did see the said C. D. sign, seal, and, as his act and deed, deliver the same indentures respectively; and, that he, this deponent

said indentures, as a witness to such signing, sealing, and delivery thereof respectively.

ON AGREEMENTS GENERALLY.

An AGREEMENT imports a memorandum in writ- The import of an agreeing containing reciprocal stipulations between the ment. parties, and which are generally entered into preparatory to a more formal contract; and it is defined in Bacon's Abridgment,(p) to be the consent of two or more persons concerning the one parting with, and the other receiving, some property, right, or benefit.

The first requisite to a valid agreement is, that The requition the parties be capable in law of entering into the agreement. agreement, (q) and an object about which a contract may be lawfully entered into between them.(r)

The agreement ought to be so full and complete The stipula-

that each party may have and maintain an action be complete. upon it; that is, it ought to show what is intended to be stipulated for, and the mutual consent of the

parties thereto.(s)

By the stat. of frauds, (t) all agreements respect- Stat. of ing land must be in writing, (except for leases not frauds. exceeding(u) three years,) and signed by the person to be charged therewith.

(p) Bac. abr. tit. Agr.
(q) The disabilities are: Infancy: Coveture, Perk. sec. 12. Zouch v. Parsons, 3 Burr, 1801. Harris v. Lee, 1 P. Wm. 483. Idiotism, Beverley's Ca. 4 Co. 124, or other incapacity of mind, 1 Bac. abr. 67. 3 P. Wms. lities.

130. n. a. 1 Fonb. Eq. 68. iv. 18 Ves. 18. Undue or coercive influence.

or fraudulent deception, Phillips v. Bucks, I Vern. 217. Muschamp, ib. 237.

(r) An agreement entered into by an infant to accept a lease for years, will make him liable to an action for rent, even during his under age; ment by an provided he takes possession accordingly, and the rent reserved be reasonable, for it will be intended for his benefit, 2 Bulst. 69. So when it appeared to be for the good of the infant, the Court of Chancery has decreed the allowance of building leases made for a term of sixty years, 2 Years 244. 2 Vern. 244.

(s) Plow. Com. 5 a. 6 a.

There is not any prescribed form of words to an agreement, but such words as show the assent of the parties are sufficient.

(t) 29 Chs. 2, s. 3.

(u) The subject must not be forbidden by the laws of religion or morality, or of the law of the land, Morse v. Royal, 12 Ves. 371. Dubost v. Berresford, 2 Camp. 511. Girardi v. Richardson, 1 Camp. 348, 1 Bos. and

Parol.

An agreement termed parol, is a contract under hand, (although understood by many as if being oral only,) and not the seal of the party; and to be good, must have some consideration to support When under it. (v) But if the agreement be under seal, although

there be no consideration moving, or reason for it being entered into, the same will be binding on the

parties.(m)

The formal parts of an agreement.

The formal parts of an agreement in writing, and usually adopted, is, first, to name the parties with their respective additions, and places of residence, in order that they may be had recourse to on the subject of the contract necessary. Secondly, it is usual and proper (although not essential) that the agreement should have a short recital leading to the subject matter of it, as recitals serve in legal as well as common construction to control, extend, or explain the meaning of any general words or expressions which may have been inconsiderately used in the operative part of the agreement. (x) Then and stipulations in an follow the covenants and stipulations between the *greement parties, relative to the subject of the contract.

Testimonium of an form of an agreement, is the declaration of the parties that, in testimony of their assent, they have

P. 340. Bowry v. Bennett, 1 Camp. 348. Walker v. Perkins, 3 Burr. 1568, Armandale v. Harris, 2 P. Wms. 432. Nerot v. Wallace, 3 Durnf. and E. 17. Kayes v. Bolton, 6 ib. 134, 2 Marshall, 273.

(v) See Jones v. Ashburnham, 4 East, 455. Parker v. Bayliss, 2 Bos. and Pul. 77. Agreements only under signature, and no seal, are called parol.—See Sug. V. and P. 75, 8th ed.

When under (w) An agreement under seal binder of the control of the c

seal.

(w) An agreement under seal binds the heir of the party if he be named, 2 Saund. 7 n. 4 ib. 136. Wilson v. Nubley, 7 East. 128. 3 Smith, 123, s.c. See Irons v. Smallpiece, 2 Bar. and Ald. 551.

As to voluntary agreements, it is laid down that as men have a right to their acquisitions.

Voluntary agreements.

their acquisitions, so may they dispose of them at their pleasure, and withtheir acquisitions, so may they dispose of them at their pleasure, and without valuable consideration; but if a man promises to convey lands, or to give goods without valuable consideration, or without delivering possession of them, this alters no property, nor has the party any remedy at law or in equity, it being nudum pactum unde non oritur actio.—3 Co. 81. 2 Blk. Com. 443. Dy. 336. ib. 2 Buls. 225. But if it be done by deed duly executed under seal, this is good in law, though there be no consideration, or no delivery of possession, because a man is estoped to deny his own deed, or affirm any thing contrary to the manifest solemnity of the contract.—Plow. 308, 309. Yelv. 196. Cro. Jac. 270. Brown, 111. 3 Bur. 1637. 2 Blk. 446. 1 Fonb. 335.

(x) See Co. Lit. 291. b. Daffron v. Goodman. 2 Vern. 362. Lampoon v.

(x) See Co. Lit. 291. b. Daffron v. Goodman, 2 Vern. 362. Lampoon v. Cork, 5 Barn. and Ald. 606. Payley v. Homersham, 4 Maul. and Selw.

put their hands and seals to the contract in the presence of witnesses; but with respect to the signing being in the presence of witnesses, it is not essential, but merely to prevent the necessity of proving the hand-writing of the parties by general evidence.

The personal representative characters, as "exe-Personal recutors and administrators," need not be named in tives bound the agreement, they being by intendment of law although not named. included in the person of the testator or intestate; (y) but the word "heirs" must be used if the real assets of the party are intended to be bound. (z)

There are three sorts of agreements; first, an Different agreement executed already at the beginning, as agreements. where money is paid for the thing agreed, or other satisfaction made at the time of the execution. Secondly, where an assent subsequent is given to an act precedent; as where one doth such a thing, and another person agrees or assents to it afterwards, and by such assent the agreement is also executed. Thirdly, an agreement executory is an agreement to execute a deed, pay a sum of money, or perform some act at a future day.(a)

In many cases, the party injured by breach of an The remedy for breach of agreement may have either a remedy by action at an agreecommon law, or by recourse to a court of equity; ment. but here a general rule must be observed, that wherever the matter put in question by the bill is merely damages, there the remedy is at law, because the damages cannot be ascertained by the conscience of the chancellor, and therefore must be settled by a jury; (b) for it is a rule of the courts of equity not to entertain the suit unless the plaintiff wants the thing in specie, and cannot have it any other way. Therefore, in general, they will not allow a bill for a specific performance of contracts of stock, corn, hops, or other articles of merchandize, but will leave the party to his remedy at

⁽y) See Hyde v. Skinner, 2 P. Wms. 270.

⁽z) See notes to p. 30.
(a) Ploud. Com. 8, 9. Terms. de Ley, 31.
(b) 1 Bar. Abr. tit. Agr. 6.

law; (c) but if there be matter of fraud mixed with the damages, and a bill is filed for an injunction upon this equitable suggestion, that the covenant was obtained by frand, and then the defendant files his cross bill for relief upon the covenant, the court will retain it, because the validity of the covenant is disputed in that court, and on an head properly cognizable there; and, therefore, if the validity of the deed be established, the court will direct an issue for the quantum of damages. (d)

Interposition of courts of equity.

Courts of equity will decree a contract to be performed in specie, at least, wherever a court of law would give damages for the non-performance of it; but which damages would not be an adequate compensation for the non-performance, the party want-

ing the thing in specie.(e)

Where agreements are endeavoured to be set aside for supposed weakness of understanding, for breach of confidence, or other substantial reasons, the inequality of the terms may be a material ingredient in the case of evidence of imposition. (f) is also to be observed, that where an agreement appears to be very unequal, the court will lay hold of very slight circumstances to avoid enforcing the execution of it.(g) But equity will not void a reasonable and fair agreement, though founded on mistake, or though the party were intoxicated, or in prison, at the time he entered into it, or some paternal authority were exerted, and some benefit accrue to the father under it; nor will the court decree a forfeiture after an agreement in which, if it were a mistake, it was a mistake of all the parties to the same.(h)

⁽c) 2 Bro. Chan. Rep. 343. 1 P. Wms. 570. 5 Nisi Abr. 538—540. Bunb. 135. 2 Eq. Ca. Abr. 161.

⁽d) Ch. Rep. 158. Abr. Eq. 17.

(e) Although equity will, in general, enforce the specific performance of contracts, if the party wants the thing in specie, and cannot have it any other way, yet if the breach of contract can be or was intended to be compensated in damages, courts of equity will not interpose.—2 Bro. Rep. 341. 1 P. Wms. 570. Bunb. 135. Goring v. Nash. 3 Atk. 186.

⁽f) 3 Wood, 453. (g) 2 Bro. Chan. Rep. 396. 1 Atk. 12. (h) 1 Bac. Ab. 111.

AGREEMENTS FOR LETTING LODGINGS.

When a part of a message or tenement is let to what are

another, it is called a lodging or lodgings.(i)

Lodgings may be let in the same manner as How let. lands and tenements; but, in general, they are let either by agreement in writing between the landlord and tenant, or by parol agreement.

If the lodgings be furnished, it will be proper to where furhave a schedule of the goods they contain affixed to nished.

the agreement.

In order to avoid disputes as to the terms, there Terms. should, in all cases, be a written agreement, although a verbal one will be binding if made in the presence of a witness.

The instrument should specify the amount of Rent, and rent; the time of entry; the length of time re-notice to quired in the notice to quit; and such other particulars as the special circumstances of the case may require.

Lodgings may be taken by the week or month, Periods. or a longer or shorter period, as every tenancy of a definite duration is a term, and of the nature of a term of years, though for a less period than a

year.(j)

The custom is, that the time for notice to quit Custom as shall be the same as the time for which the lodgings to notice to were taken, as a week's notice for a week's taking, a month's notice for a month's taking, &c.(k)

(i) When a house is divided into several apartments, with an outer door When preto each spartment, and no communication with each other, subsists in mises are this case the several spartments are considered in law as distinct houses, divided. but not if the owner lives in the house, for in that case, the untenanted apartments will be considered as parts of his house.

If there be two several tenements originally, and they became inhabited by several families, who make but one avenue for both, and use it promiseuously, the original severalty will be thereby so far recognized,

that they continue to be severally rateable to the poor.—Tracy v. Talbot, 6 Mod. 214.

(j) Lit. 67. Doe v. Rosse, 5 Barn. and Ald. 766. See p. 9.

(k) Doe d. Parry v. Hazell, 1 Esp. 94, Doe d. Campbell v. Scott, 6 Bing. 362. Wilson v. Abbott, 3 B. and C. 89.

Payment of rents.

There is no distinction in law between lodgers and other tenants, as to the payment of their rents, or turning them out of possession, for they are, in general subject to the same regulations as other tenants.

Necessary vious to entering.

It will be advisable for the lodger to inquire if inquiries to the tenant has paid his rent and taxes, and to take lodgers pre- into consideration the probability of his continuing to do so, as the goods of a lodger are liable for the same; (l) the landlord should, therefore, be required to produce the receipts at the time of entering into the agreement.

When the agreementis publio morality.

All agreements entered into that are subversive injurious to of public morality, are illegal and void, such as for prostitution.(m) Therefore, no action can be maintained to recover for lodgings let to an immodest When action woman, to enable her to consort with the other can or can sex.(n) But if a woman of easy virtue merely lodge not be main- in the house, and receive her visitors elsewhere, an action may be maintained for the rent. (o)

lodgings.

Landlord's

If a landlord of lodgings enters into, and uses the deprives him rooms whilst his tenant is in possession, he is deof his rent. prived of his right to rent; but if the tenant has tenant has abandoned the possession during his tenancy, the abandoned the lodgings landlord lighting fires in the rooms, or even using the entry is the fires, will not deprive him of his right to rent. (p)

The stat. of

An agreement to occupy lodgings at a yearly rent, frauds as to payable in quarterly proportions, (the occupation to lodgings at a yearly rent commence on a future day,) is an agreement reto commence lating to interest in land, within the meaning of the fourth section of the stat. of frauds. (q)

in fuluro.

(I) See the head "Distress for rent," (m) 1 Esp. ca. 13.

⁽n) Walker v. Perkins, 3 Burr. 1568.
So although the landlord did not know at the time of letting the lodgings of the defendant's habits, if he afterwards became acquainted with the fact, and permitted her to remain as a tenant.—Jennings v. Throgmorton, 1 Ryan and Mood, 251. S. P. Girardy v. Richardson, 1 Esp. ca. 13; and see 1 B and P. 340.

⁽o) Appletree v. Campbell, 2 Carr. and Payne, 347.
(p) Griffith v. Hodges, 1 C. and P. 419; and see Harding v. Creethorn, 1 Esp. 57. Wales v. Atcheson, 3 Bing. 462. S. C. 2 C. and P. 268; and. see also Redbath v. Roberts, 3 Esp. 225. (q) Inman v. Stamp, 1 Stark. 12.

(1)

Agreement for letting Unfurnished Lodgings.

AGREEMENT made this —— day of, &c. in the year Parties. of our Lord, 1838, Between (landlord,) of, &c. of the one part, and tenant of, &c. of the other part.

THE said (landlord) agrees to let, and the said Agreement tenant agrees to take, the apartments following, that is to say, [state the rooms intended to be let,] with Apartments. the conveniences and appurtenances thereunto belonging, being part of a house and premises in which the said (landlord) now resides, situate and being in, &c. TO HAVE AND TO HOLD the same Habendum rooms and apartments for and during the term of, for half a [half a year,] to commence from, &c. at and for the rent or sum of, &c. payable quarterly, by even Rent, and and equal portions; the first quarterly payment to how paybe made on, &c. next ensuing the date hereof. And, it is hereby further agreed by and between Agreement the said parties, that, at the expiration of the said half a year term of half a year, the said (tenant) may hold, to hold from occupy, and enjoy, the said rooms or apartments, quarter to from quarter to quarter, for so long a time as the said (landlord) and (tenant) shall and may agree, at the rent of, &c. for each quarter, and, that each party shall be at liberty to determine the tenancy, Liberty for on giving to the other a quarter's notice in writing. quitting in a And, it is also further agreed by and between the notice. said parties hereto, that, when the said tenant shall quit the premises, he shall leave the same in as good state, condition, and repair, as they shall or may be in on his taking possession thereof, (reasonable wear only excepted). In witness, &c.

Agreement for letting and taking Apartments for one Week, and from thenceforth from Week to Week.

MEMORANDUM of agreement made this, &c. by Parties.

Operative part.

Habendum

quit.

and Between (landord) of, &c. of the one part, and (tenant) of, &c. of the other part, in manner following, (that is to say,) the said (landlord) hath agreed to let, and doth let, and, the said tenant hath agreed to take, and doth hereby take, ALL that Apartments. the back room, being on the south side of the first floor of the house now in the occupation of the said (landlord,) situate in, &c. with the conveniences and appurtenances belonging to the said room: To HOLD the same with their appurtenances, and the sole and uninterrupted use and occupation thereof, unto the said (tenant) his executors, administrators, and assigns, for the term of one week from the date hereof; and, at the expiration of that time, that the said (tenant) may hold the said apartments from week to week, at the same rent as aforesaid, until one week's notice be given by one of the said parties to the other: Provided Always, and it is agreed to notice to between the said parties, that it shall not be necessary that such notices shall expire at the same day, time, or month, of the year, as the date of this agreement; but that the said (landlord) or (tenant) or either of them, shall and will accept and take one week's notice at any period, as a sufficient notice for the conclusion of the term created by this agreement. As witness our hands, &c.

Agreement for letting Apartments for one Year.

Parties.

MEMORANDUM, that it is hereby declared and agreed, by and Between (landlord) of, &c. and (tenant) of, &c. in manner following, (that is to say,) the said (landlord) hath hereby agreed to let, and hereby doth let, and the said (tenant) hath Apartments, agreed to take, and doth hereby take, ALL that the first and second floor, and back kitchen, with the conveniences and appurtenances thereto belonging, of the house now in the occupation of the said (landlord) situate, &c. together with one cellar adjoining the aforesaid kitchen, and to the said house

belonging; To HOLD the same with their appurtenances, and the sole and uninterrupted use and occupation thereof, unto the said (tenant), his executors, administrators, and assigns, for the term of twelve months, to commence from the twenty-fifth Period. day of March, now next ensuing, at the net yearly rent of, &c. payable quarterly, on the twenty-fourth day of June, the twenty-ninth day of September, the twenty-fifth day of December, and the twentyfifth day of March thence next ensuing; And it is Terms of further agreed, by and between the parties hereto, enjoyment. that the said (tenant) may hold and enjoy the said premises hereby let unto him, from quarter to quarter, at the same rent as aforesaid, until three months' notice to quit be given by one of the said parties to the other of them; AND, it is also further To leave agreed between the said parties, that when the said good condi-(tenant) shall quit the said premises, hereby de-tion. mised to him, he shall and will leave the same in as good a state and condition as the same now are, reasonable and proper use only excepted. As witness our hands, &c.

(4.)

Agreement for furnished Lodgings.(r)

MEMORANDUM of an agreement made and entered Parties. into this, &c. BY and BETWEEN (landlord) of, &c. of the one part, and (tenant) of, &c. of the other part, by which the said (landlord) agrees to let to the said (tenant) a room or apartment, up one pair of Apartments. stairs forwards, in his the said (landlord's) house, situate in, &c. ready furnished, together with the use and attendance of his woman servant, in common with the other lodgers, (at such hours and times when he himself can spare her,) and also the use of a cellar, the same to be held at the rent of, &c.

⁽r) By sec. 45 of 7 and 8th Geo. IV. c. 29, it is enacted, that if any person shall steal any chattels or fixture, let to be used by him or her, in er with any house or lodging, whether the contract shall have been entered into by him or her, every such offender shall be deemed guilty of felony.

Tenant agrees to take.

per quarter; And the said (tenant) agrees to take the said room or apartment, with the use of the servant and cellar, as aforesaid, at the said rent, and also to provide and find for himself all manner of linen and china or crockery-ware whatsoever, that he shall have occasion for; and that if he shall break or damage any part of the furniture of the said landlord, he will make good or repair the same, or pay him sufficient to enable the said (landlord) to put the same in as good plight and condition as they now are in; And, it is further agreed, that if either party shall be desirous of determining the tenancy, he shall respectively give or take a quarter's notice in writing, to be computed from the date of such notice. As witness, &c.

Notice.

(5.)

Another Form with an Inventory.

Parties.

AGREEMENT, made and entered into this day of, &c. BETWEEN (landlord) of, &c. for himself, his executors, administrators, and assigns, of the one part, and (tenant) of, &c. for himself, his executors and administrators, of the other part, as follows.

Agreement to let.

Period.

First, the said (landlord) doth hereby let unto the said (tenant), and the said (tenant) doth Apartments hereby agree to take, the entire first floor com-

pletely furnished, (as particularly set forth in the schedule hereunto annexed,) as the same now is, being part of a house in which the said (landlord) now lives, situate, &c. to be held and enjoyed by

the said (tenant) for and during the term of, &c. to commence, &c. at and after the rate of, &c. per

Terms of holding.

annum, of lawful money, &c. payable at, &c. the first payment to begin and be made on, &c. next ensuing the date hereof; And, it is further agreed, that by and between the said parties hereto, that the said (tenant) shall and may after the expiration of the said term of, &c. hold and enjoy the said premises quarterly, so long as both parties shall mutually

agree, at the same rent as aforesaid; AND, the said Tenant to tenant hereby undertakes that, when he shall quit ture good. the said premises, hereby let on demise to him as aforesaid, he will leave the furniture and other things mentioned and set forth in the schedule hereunder written, in as good state and condition as the same now are (the reasonable use and wear and tear thereof only excepted). In witness, &c.

An inventory to which the above agreement refers.

(6.)

A general Form of Agreement for letting Lodgings.

ARTICLES of agreement entered into this ——day of, Premises. &c. BETWEEN A. B. of, &c. for himself, his heirs,(s) executors, and administrators, of the one part, and C. D. of, &c. for himself, his heirs, executors, and administrators, of the other part, as follows, that is to say,

The said A. B. agrees to let, and the said C. D. Agreement agrees to take, All those the first and second floors Apartments. and front garret, (or as the case may be,) with the conveniences and appurtenances thereto belonging, of the messuage or dwelling-house, now in the occupation of the said A. B. situate at, &c. as the same are furnished according to the schedule or Schedule. inventory hereunder written; together with the use, in common with the said A. B. and his family, of the front kitchen of the said house, and the back wash-house or yard, for the term of — months, Period. to commence from the —— day of —— now next ensuing, after the rate of the yearly rent of £ ----- Rent. of lawful money of Great Britain, by equal quarterly payments, the first payment thereof to be made on the —— day of —— now next ensuing,(t)

(s) If the heirs be named, and intended to be bound, the instrument must be scaled and stamped with a deed stamp.—See 5 Barn. and Cres. 41.

(f) If in advance, say "in advance, and as and for the next succeeding quarter; and so on until the commencement of the last quarter's rent preceding the expiration of the said term, when such last quarter's rent **p** 2

Terms of

holding.

Notice.

Repairs by landlord.

Distress.

Tenant to leave goods and furnicondition.

(or say, if it be intended that the rent be reserved weekly,) for the period or space of —— weeks, to commence from the —— day of — - now next ensuing, at —— guineas per week (or payable in advance on Monday in every week). AND, it is further agreed, by and between the said parties hereto, that the said C. D. shall and may, after the expiration of the said term of six months, hold and enjoy the said house, furniture, and premises, from quarter to quarter, to be reckoned from the day of —— at the same rent as aforesaid, until either of the said parties shall give three calendar months' notice to quit, under his hand, to the other of them; and, that he the said (landlord) shall and will during the said term or time keep the apartments in tenantable repair, and replace such of the furniture as shall from time to time be destroyed or damaged by reasonable use and wear thereof. [And, it is also agreed, that the said A. B. shall have power to distrain for the said rent, upon any of the goods and chattels of the said C.D. as often as the same shall be twenty days in arrear.](u) And, that he, the said C. D., at the end of the said term of six months, or expiture in good ration of such notice as aforesaid, as the case may be, shall and will leave the said fixtures and furniture, articles, and things mentioned in the said schedule, in as good state and condition as the same now are, (reasonable use and wear thereof only excepted,) and also replace and leave all such dishes, plates, china, glass, and utensils, as shall be broken, or in anywise damaged, of the same kind, pattern, and value. In witness, &c.

Schedule or inventory referred to.

shall be payable and paid." (The rent must be made payable in advance during the whole of the term, or it will otherwise be construed to extend to the first quarter's rent only.—Holland v. Salsor, 2 Stark. 161.)

(u) The above clause is not necessary, as the landlord may distrain for his rent for lodgings the same as for a demise of a house and premises.—

See Newman v. Anderton, 2 New. Rep. 242.

AGREEMENTS FOR LEASES.

ALL agreements for leases(v) should be clear and Agreements explicit on all material points, as no parol evidence should be can be adduced to supply the omissions in the clear and agreement of the term or number of years for which No perolevi the lease is intended to be granted, or the amount dence can be adduced. of rent, or by whom the taxes are to be paid. (w)

If it be intended that the tenant shall not be at To prevent liberty to assign or underlet a covenant for that assignment by lessee. purpose, must be expressly stipulated for in the egreement(x) to be inserted in the proposed lease, as none but the common and usual covenants are implied, and such covenant against assigning or underletting, is not considered as one.(y)

Unless a clause be added in a covenant to re-covenants pair, as to "damage by fire or tempest, or other insurance. inevitable accidents excepted," the lessee will be hable to rebuild if the house is burnt down; (z) but, a covenant for insurance by the lessee being added will obviate the question.(a)

(v) By the stat. 29 Ch. II. c. 3, s. 4, an agreement for a lease, unless Stat. for a term not exceeding three years, must be in writing, and for which frauds. the reserved rent must be at least two thirds of the real value, and be signed by the party to be charged therewith. The first sec. of the stat. of frauds, as construed by the second, is meant to vacate parol leases conveying a greater interest in land than for three years, and where a rent is reserved.—Crosby v. Wadsworth, 6 East. 602; and see Sug. V. & P.

(w) Clinan v Cook, 1 Sch. and Lef. 22. Woollam v. Hearn, 7 Ves. 221.

Pym v. Blackburn, 3 Ves. 34. Rich v. Jackson, 4 B. and C. 514. Marquis of Townshend v. Stangroom, 6 Ves. 334 n.

quis of Townshend v. Stangroom, 6 Ves. 334 n.

(x) The usual covenants, in the absence of any agreement to the contrary, are, that the leasee shall pay the rent and taxes, and keep the venants in tenantable repair, with leave for the leaser to enter and view, and for the lease to amend on notice; and that the leasee will quietly house. Vield up the premises at the end of the term, with a provise for re-entry, on non-payment of the rent, or non-performance of the covenants; and lastly, a qualified covenant for the leasee's quiet enjoyment.

(y) Henderson v. Hay, 3 B. C. C. 632. Vere v. Loveden, 12 Ves. 179.

Church v. Brown, 16 Ves. 258.

(z) Bullock v. Domitt, 6 T. R. 650. Pym v. Blackburn, 3 Ves. 34.

(s) A tenant will still be liable under the covenant to pay the rent, not-tenant when withstanding the house is burnt down, unless it be stipulated for in the tenant when contract, that there should be a suspension of rent in case of accidents by house is fix.—Monk v. Cooper, 2 Stra. 763. Belfour v. Weston, 1 T. R. 312. Baker burnt.

D 3

The tenant has no equity to compel his landlord As to the expenditure of insurance to expend the money received from an insurance office in rebuilding, (b) as the only remedy in that money. case is to give notice to quit.(c)

Reservation of rent free from taxes.

A RESERVATION of rent, free from all manner of taxes, is now held to extend to the land-tax and all taxes subsequently imposed.(d)

Exception in lease.

If any exception is intended to be included in the lease, it ought to be expressly stipulated for in the agreement.

Agreement

An agreement for a lease contains no implied for lease as to warrantry engagement for general warranty of the land, nor for delivery of an abstract of the lessor's title; (e) but the lessee has a right to inspect the lessor's of lessor's title, (unless otherwise stipulated,) (f) except in the case of a bishop. (g)

Inspection title.

Lessor's title

Stipulation

sor's title.

The lessor's title must be clearly made out, or a specific performance of the agreement of a lease will not be enforced, as the intended lessee is considered in the nature of a purchaser.(h) in contract lessee is desirous of having the lessor's title investition of les-gated, it will be advisable to have a stipulation inserted in the contract, as to the production of the lessor's title or not, to prevent any question or difficulty arising.

An agreeequity.

Where an agreement stipulates that the lease ment for usual cove. shall contain such covenants as are usual in leases nants will be of land, &c. in the neighbourhood, it appears that a court of equity will enforce a specific performance. (i)

The diffi-

A difficulty frequently arises in determining from culty arising in determin. the words of the instrument, whether it operates as ing whether a lease, or only as an agreement for one; (j) and,

> (b) Leeds v. Chatham, 1 Sim. 146.
> (c) Pindar v. Ainsley, 1 T. R. 312. Pym v. Blackburn, 3 Ves. 34.
> (d) Bradbury v. Wright, Dougl. 602. Amfield v. White, 1 R. and M. 246.

(e) Grillim v. Stone, 3 Taunt. 434. Temple v. Brown, 6 ib. 69.
(f) Waring v. Macreth, Forr. 138.
(g) Fane v. Spencer, 2 Madd. 438.
(h) Fildes v. Hooker, 2 Merr. 424.
(i) Roandman v. Moston & Ver. 467

(i) Boardman v. Mostyn, 6 Ves. 467.

(j) This will depend upon the intention of the parties, to be collected from the instrument itself. If strong circumstances of inconvenience are

parties are frequently let into possession under an instrusuch agreements, and allowed to continue in posoperate as a
session without any further formal instrument being lease or an
executed, which has given rise to much litigation—for one. it may therefore be useful to consider the points which have arisen in cases of this description.

Formerly, when an agreement contained words Words of present deposit of present deposit of present demise, it was held to amount to an mise formerabsolute lease, although covenants were added, to constitute prospective of some further act to be done, a lease. such covenants being construed to be merely in further assurance. As where before the Stat. of Frands, a party said, "you shall have a lease of Maldon's case, Cro. my lands in D. for twenty-one years, paying Eliz. 33, 486

therefore ten shillings per annum-make a lease in writing and I will seal it;" this was held a good lease by parol, and, the making of it in writing was but a further assurance. (k) For a similar Harrington

reason, the words doth let in articles of agreement Eliz. 486. have been held a present demise, although there Noy, 57. was a further covenant, "that a lease should be made and sealed according to the effect of the

articles, before the Feast of All Saints next enswing;"(l) but, a different principle now prevails, the intention of the parties is alone considered; although, the most proper form of words of leasing Bazter d. Abrahall v. are made use of, yet, if upon the whole there ap-Browne, 2 pears no such intent, but, that the instrument is Blk. 973-4. preparatory and relative to a future lease to be made, the law will rather do violence to the words, than break through the intent of the parties by construing a present lease, when the intent was mani-

likely to arise (and which are apparent on the face of the instrument) by the construction of it, as a lease will point out the intention of the parties that it should be an agreement only.—Dowding v. Bissell, 3 Taunt. 65.

8. P. Doe d. Jackson v. Ashburner, 5 T. R, 163.

festly otherwise. (m)

⁽k) Maldon's Case, Cro. Eliz. 33.

(l) Harrington v. Wise, Cro. Eliz. 486. Noy, 57.

(m) Bac. Ab. tit. Leases, 164. Baxter d. Abrahall v. Browne, 2 Blk.

CASES WHERE THE AGREEMENT WAS HELD NOT TO CONSTITUTE A LEASE.

Articles were drawn up as follows:-"A. Case in which the doth demise his close to S. to have it for agreement was consi- forty years," and, a rent was reserved, with a preparatory. clause of distress, upon which articles a memo-Sturgeon v. randum was also written, "that the articles were Painter, Noy, 128. to be ordered by counsel of both parties, according to the due form of law:" ruled, not a sufficient

lease.(n)

Case in which leases

And in a case where the words were, "A. doth were direct agree to let, and B. agrees to take" for a certain term, drawn, the at a certain rent, all his estates, the said B. to enter instrument upon the premises immediately; and, it was further operated as agreed, that leases with the usual covenants should ment only. be made and executed by a certain day; (o) this Hardey, sc. agreement, although containing words of present demise, was held not to operate as a lease.

In another 18.

An instrument being executed upon an agreecase where a ment stamp, on the twenty-fourth of November, be made the setting forth the conditions of letting a farm, and instrument the regulations to be observed by the tenant; strued as an that the term would be from year to year, and agreement only. Tem- the premises to be entered upon the third of Febpest v. Raw. ruary; and, that "a lease was to be made upon those conditions, with all usual covenants:" at the foot of which the defendant wrote, "I agree to take, lot 1, (the premises in question,) at the rent of, &c. subject to the covenants, HRLD to be an agreement for a lease, and not a present demise.(p)

Case in

And where, upon an agreement stamp, A. agreed

(n) Sturgeon v. Painter, Noy. 128.

⁽o) The stipulation that leases should be so drawn, was held to show plainly that it was not the intention of the parties that such agreement should operate as a lease, but only to give the defendant a right to the immediate possession, till a lease could be drawn.—See Phillips v. Hartley, 3 C. & P. 121.

⁽p) In this case, there was not only a stipulation for a future lease, but time given to prepare it before the commencement of the term, and no present occupation as tenant contracted for.—Tempest v. Rawlins, 13 Bast. 18.

to demise and let certain copyhold premises for a which the certain term at a certain rent, and further under- instrument was held to took to procure a licence to let such premises, the be executory court held that the instrument was an executory coore v. agreement only, for two reasons: first, because if it Clare, 2 T. were held to be a lease a forfeiture would be in were held to be a lease, a forfeiture would be incurred, which would be contrary to the interest of the parties, who had cautiously guarded against it by the insertion of a covenant, that a licence to lease should be procured from the lord; and, secondly, because the stamp was conformable to the nature of an agreement for a lease, and not adapted to an absolute lease. (q)

Where the words were, "that the said mills he present deshall hold and enjoy, and I engage to give a lease with a stipuin for a certain term, &c." it was ruled, that the lation for a words, "shall hold and enjoy," would have deemed an operated as words of present demise, if this had only. Doed.

not been controlled by those which followed. (r)

Ashburper

And, where the words were, "agreed this day to 5 T. R. 163. let my house to B. for a certain term," a clause Words conto be added in the lease, "to give my son a power, strued to intenda future kc." it was considered to be manifest from the demise. Doe latter words, that a future instrument of demise v. Smith, 6 was contemplated.(8)

And, where the agreement was, "Memorandum Amemoranof an agreement between A. and B. A. agrees ously meanto let on lease, with a purchasing clause for the ing to exe-term of twenty-one years, all that house, &c. construed as entering on the premises at any time on or before an agreement only. the eleventh of February, at the net clear rent of Dunk v. £80 per year, and to keep all the premises in as B. & A. 322. good repair as when taken to, the rent payable quarterly," it was held to be an agreement preparatory to a demise, and not an actual demise.(t)

⁽⁹⁾ Doe d. Coore v. Clare, 2 T. R. 739. (7) Doe d. Coore v. Ciare, z T. R. 739.
(7) Doe d. Jackson v. Ashburner, 5 T. R. 163. But the words, "be it remembered, that J. B. hath let, and, by these presents, doth demise," were held to operate as a present demise, although there was a further evenant for a future lease.—Barry v. Nugent, 5 T. R. 165. a.
(5) Doe d. Bromfield v. Smith, 6 East, 530.
(6) Abbott C. J. observed in this case, that it had not any of the forms

In a case where an instrument contained words present de-mise, but of present demise, there was no direct reference to construed as any future lease, but it appeared upon taking the Morgan d. was intended, the same rule of construction pre-Bissell, 3 vailed. (u)

CASES WHERE THE AGREEMENT OR INSTRUMENT WAS HELD TO CONSTITUTE A LEASE.

Bur, when an instrument upon an agreement pend money stamp was as follows: "A. agrees to let, and B. on premises agrees to take, all that land, &c. for the term of was considered as sixty-one years from Lady-day next, at the rent having a de-mise. Poole of £120.; and for, and in consideration of, a lease v. Bentley, to be granted by the said A. for the said term of 12 East. 168. years, the said B. agrees to expend £2000. in building within four years, five houses of a third class of building; and, the said A. agrees to grant a lease or leases of the said land, as soon as the said houses are covered in; and the said B.

> of a lease; that it began, "Memorandum of an agreement." A. agrees to let on lease (which obviously meant to execute a lease); that it was impos-

observations in the case, the agreement was, "A. agrees to let to B. all his form, &c.
(except three peices of land,) to hold for twenty-one years, determinable at the end of the first fourteen years, at the yearly rent of £26. payable, &c. and and under all other usual and customary covenants and agreements, as between landlord and tenant. A. to allow a proportionate part of the rent for the three peices of land above excepted;" and the court held that it amounted only to an agreement for a lease, for the following reason, because "at the yearly rent, &c." and "at and under all usual covenants, &c." not being the language in which a lawyer would introduce into a lease Ste." not being the language in which a lawyer would introduce into a lease the technical covenant for further assurance, but it contemplated the entire making of an original lease, and because no landlord or tenant of common sense would enter into a term for twenty-one years, without ascertaining what were the terms on the one side or the other, by which they were to be bound for that period, and what was to be the rent apportioned

for the excepted premises.—Morgan d. Dowding v. Bissell, 3 Taunt. 65. Where landlord and tenant, between whom there was a subsisting tencase of words of present the amount of the rent to be settled by valuation, and the tenant to find demise not operating as a lease.

Where tandical and tenant, between whom there was a stocking tenant of the farm upon different terms, the amount of the rent to be settled by valuation, and the tenant to find operating as a lease.

The amount was not settled, the sure-ties were not given, nor was any rent ever paid. Held that the instrument, although it contained words of present demise, did not operate as a second contained words of present demise, did not operate as a second contained words. John v. Jen- lease, or alter the terms of the existing tenancy.—John v. Jenkins, 1 kins, C. & M. C. and M. 227. 3 Tyr. 170.

Another

egrees to take such lease or leases, and execute a counterpart or counterparts thereof; this agreement to be considered binding, until one fully prepared can be produced." The court held the same to be a lease, considering it to be the intention of the parties, that the tenant who was to expend so much capital upon the premises within the first four years of the term, should have a present legal interest in the term, which was to be binding upon both parties; although, when a certain progress was made in the buildings, a more formal lease or leases, in which perhaps the premises might be more particularly described for the convenience of underletting or assigning, might be executed.(v)

And where the instrument was, "A. agrees to Agreement let, and also on demand to execute, to B. a lease of to be binding until lease certain lands, and B. agrees to take, and upon de-executed mand to execute, a counterpart of a lease of the construed as said lands, for a certain term, at a certain rent; the Doe d. Wallease to contain the usual covenants, and the agree- 15 East, 244. ment to bind until the lease be made and executed, kc." It was held to be a present demise, and the agreement for a future lease with further covenants,

was for the better security of the parties.(w)

And, in a case where the instrument was in the when the following words, "Memorandum of agreement were inconmade on, &c., between A. and B., the said A., for sistent with the considerations hereinafter mentioned, agrees to a tenancy from year to grant, seal, and execute, unto B. a legal and effective year the instrument lesse of all that messuage, &c., to hold the same was conunto B. his executors, &c., from, &c., for the term strued as a lease. Pinero of five years, at and under the yearly rent of, &c., v. Judson, 6 to be made payable quarterly, and under and sub-Bing. 207. ject to covenants by and on the part of B.; to pay the rent, and all taxes; to keep the premises in repair; to paint the outside every third year of the term; (and certain other covenants which need not be enumerated;) and the said B. agreed to accept

⁽v) Poole v. Bentley, 12 East. 168. (v) Doe d. Walker v. Groves, 15 East. 344.

and take a lease upon the terms aforesaid, and, in the mean time and until such lease should be made and executed, to pay the rents as aforesaid, and to hold the premises subject to the covenants above mentioned; and the said B. further agreed to put the premises into good tenantable repair at his own expence, and to complete all such repairs forthwith; with power of re-entry for non-payment of rent, or non-performance of covenants, before the lease should be made and executed." The court held that this instrument amounted to a present demise.(x)

Observation Judson.

(x) It was observed by the court, in this last case, that, although there by the court were conflictory expressions, it clearly was the permanent intention of in the case the parties that the instrument should operate as a lease; for that the deof Pinero v. fendant was to hold, according to covenants, some of which were inconsistent with a tenancy from year to year, as, that to paint once in three years, and that for putting the premises in repair before he commenced his occupation, and that there could be no doubt it was meant that there should be a former lease, but that the tenant should hold in the mean time under a demise upon the same terms as if the lease had been executed. -Pinero v. Judson, 6 Bing. 206.

Was construed as leases.

Other cases where the agreement "between A. B. and C. D." by which "A. B. agrees to pay C. D. £140 a year, in quarterly payments," for a house, garden, &c. (describing the situation,) for the term of seven, fourteen, or twenty-one years, at the option of the tenant; the rent to commence from the first of January, &c. is a lease, and not merely an agreement for one.--Wright v. Trevezant, 3 C. P. 441.

In the following case the words were, "G. F. does this day agree to let Stainforth v. to J. S. three cottages for ten years; he further agrees to build a brew-Fox, 7 Bing. house, and make a cellar, at the rent of £35; he agrees to pay the ground 590. rent, and has this day received £4 from J. S. in earnest." Held an actual demise, and not an agreement for a lease.—Stainforth v. Fox, 7 Bing. 590. 5 M. and P. 589.

Wilson v. Chisolm, 2

Also, where A. agreed to let premises to B. "on lease," for a certain term, at a certain rent, "subject to the stipulations and covenants in the C. & P. 474. original lease, under which he holds," and "to keep the said stipulations in every respect, until the said lease shall be granted, which lease, when required by B., is to be prepared by A.'s solicitor, but at B.'s expense," is and not an agreement for one only.—Wilson s. Chisolm, 2 a lease, C. and P. 474.

Doe d. Pear. And, where the instrument ran thus:—"K. agrees to let, and P. to son v. Ries, take, a house in its unfinished state, for the term of sixty years, being the 8 Bing. 178, whole term that K. has the same leased to him, at the rent of £526, payable quarterly, the first payment for the half quarter at Christmas next. P. to insure the premises, and to have the benefit of an insurance lately paid; a lease and counterpart to be prepared at the expense of P., and to contain all the clauses, covenants, and agreements, that K. entered into in the lease granted to him. Held an actual demise, and not an agreement for a lease.—Doe d. Pearson v. Ries, 8 Bing. 178. 1 M. and Scott,

Hancock v. Caffyn, 1 M. & 8. 521.

And also, where the defendant held premises under a lease from one J. P. at a certain rent, and entered into an agreement with one N. for the sale of furniture, on the premises, for a certain sum, payable by instalments; covenanting, that on payment of the whole of the purchase money, to demise the premises to N. for twenty-five years, the lease to

If, under a mere agreement for a lease at a cer- When tetain rent, the tenant is let into possession before the into possesdeed is executed, the lessor cannot distrain during sion under the first year, for there is in that case no actual de-ment for a mise, either express or implied.(y) The mere lease. act of taking possession under an agreement, renders the party tenant at will; and, while that relation subsists, no distress can be made; as soon as rent is paid under the agreement, then the occupier becomes tenant, under an implied demise, from year to year, according to the provisions of that agreement, and continues so until an actual lease is executed.(z)

It seems the best course to be pursued in prepar- The plan of ing executory agreements for leases, when the term preparing is to exceed three years, is, to add a provision that, agreements. in the mean time, and until a lease shall be executed in pursuance thereof, the tenant shall enter and occupy from a certain day, as tenant from year, and under the rents, covenants, and agreements, stipulated to be inserted in the lease; but the agreement must not be under seal, for, in that case, it will require a deed stamp.(a)

The general form of an agreement for a lease of Form of an a house is, first, a stipulation on the part of the in- agreement for a lease.

contain the like covenants on the part of N. as were contained in the lease under which the defendant held. The agreement also contained a covenant that N. should, in the mean time, and until such lease should be granted, pay the rent, and perform all the covenants which would be to be performed by him, in case the lease was actually granted, with a power of distress for non-payment of the rent. N. was let into immediate possession under this agreement, and paid rent. Held that the agreement amounted to a present demise.—Hancock v. Caffyn, 1 M. and Scott, 521. 8 Bing. 368.

A memorandum of agreement to let, which contains words of present Warman v. demise, and ascertains the terms of the intended tenancy, will operate as Faithful, 3 a present demise, although it provides for the preparation of a future Nev. & M. lease.—Warman v. Faithful, 3 Nev. and Man. 137. 5 Barn. and Ald. 137. 1042

A memorandum having a lease stamp, by which A. agrees to let B. cer-Peurce v. tain lands, mentioned in an annexed abandoned lease, from A. to C. upon Cheslyn, 5 the conditions, agreements, &c. contained in the same lease, and by which Nev. & M. A. and B. bind themselves to execute a lease, similar to such abandoned 652. lease, is itself a valid lease.—Pearce v. Cheslyn, 5 Nev. and Man. 652.

(The annexed lease may be read in evidence, although it be unstamped.)

(y) Hegan v. Johnson, 2 Taunt. 141.
(z) Hammerton v. Steed, 3 B. and C. 478.
(a) Clayton v. Burtenshaw, 5 Barn. and Cres. 41. 6 T. R. 317, see pp. 55 and 56, and note a.

ALL .

2

tended lessor to demise the premises by indenture, to hold for a certain term, at a specified rent, payable yearly, half yearly, or quarterly, with stipulations on the part of the intended lessee, that the lease shall contain certain covenants on his part, such as payment of rent and taxes, and to repair the premises, "with all other usual covenants;" (b) and, if it be intended that he shall not assign or underlet, with an express stipulation to be inserted for preventing the same, as also to prevent noxious trades being carried on in the premises; and, that the said lease shall also contain the usual proviso for re-entry on non-payment of rent, or non-performance of the covenants; and the landlord stipulates to covenant for quiet enjoyment by the lessee, and withfull stipulations between the parties as to the execution of the lease and counterpart, and by whom the expense of the agreement and also the lease and counterpart shall be borne.

(1.)Agreement for the Lease of a House.

Parties.

ARTICLES of agreement made and entered into the — day of, &c. Between A. B. of, &c. for himself, his heirs, (c) executors, and administrators, of

Usual stipulations.

(b) If the agreement be for the lease of a farm, the stipulations should be framed according to the custom of the country; the following are usually inserted in such leases, and to follow after the covenant for payment of rent and taxes:—For tenant to repair, landlord finding rough timber, &c. with permission for landlord to view the state and condition of the prewith permission for laudlord to view the state and condition of the premises;—not to plough meadow or pasture land not broken for fifty years past;—not to carry off the premises any hay or fodder;—to spread the dung on the premises;—to manage the lands in a husbandlike manner, and to leave the dung of the last year on the premises;—not to cut hedges under a certain growth, and to cleanse the ditches adjoining thereto, and to preserve the hedges when plashed from injury by cattle;—to prepare for seed fallow land in the summer preceding quitting, and lay down with clover seed and rye grass part of the arable land then in tillage—with a proviso for re-entry by landlord, in case of non-payment of rent, or non-performance of covenants;—and also covenants by landlord for quietly enjoying;—and further, to provide timber for repairs;—and for tenant to enjoying;—and further, to provide timber for repairs;—and for tenant to have the use of the barn, and room for servants, for threshing the last year's crop, leaving the straw for manure on the premises.

(c) When the word heirs is mentioned, the agreement will require a deed stamp of £1 15s. and must be under seal if the same is intended to be binding on the heirs.—See Clayton v. Burtenshaw, 5 Barn. and Cres.

the one part, and C. D. of, &c. for himself, his heirs, executors, and administrators, of the other part, as follows.

The said A. B. doth hereby covenant, promise, Agreement and agree, to and with the said C. D., that he the said A. B. shall and will, within the space of three months, now next ensuing, (or say on or before the —— day of, &c. next,) well and effectually, by indenture, demise, lease, and set unto the said C. D. ALL that messuage, tenement, or dwelling- Subject of the agreehouse, situate, &c. and late in the occupation of, &c. ment. together with the rights, members, and appurtenances thereto belonging; To HOLD the same unto Term and rent. the said C. D. for the term of twenty-one years, at and under the yearly rent of £50, payable half-yearly, clear from all taxes, rates, and assessments, whatsoever, (except the land tax,) the first payment thereof to be made on the —— day of, &c. And it is hereby Covenants also agreed, by and between the said parties to these in the lease. presents, that, in such indenture of lease, there shall be contained the following covenants on the part of the said C. D. (that is to say):—

For payment of the rent, half-yearly, as afore-Payment of

And to keep the said messuage and premises in To repair. good repair, and to yield up the same in as good condition as they now are in, together with the several fixtures to the premises belonging, at the end or other sooner determination of the said term, (reasonable use and wear thereof only excepted).

And not to assign or underlet the said premises, Not to assign or underlet the said premises and the said premises are the said premis or any part thereof, to any person or persons whom- derlet. soever, without the consent, in writing, of the said A. B., first had and obtained for that purpose. (d)

And not to use, exercise, or permit, or suffer, any Not to suffer

41. 6 T. R. 317. But if under hand only, it is termed parol, and binding

on the personal representative, and requiring only an agreement stamp. Wilson v. Knubley, 7 East. 128.

(d) This covenant must be expressly stipulated for in the agreement, and the same will not be implied under the terms usual covenants.—Henderson v. Hay, 3 Barn. and Cres. 632. Vere v. Loveden, 12 Ves. 179. Church v. Brown, 15 Ves. 258.

any noisome person or persons whom soever, to carry on or exercise any noisome or offensive trade or business whatsoever, in or upon the said messuage and pre-

mises, or any part thereof.

Proviso for re-entry,and covenants.

And in the said indenture shall be contained a other usual proviso for re-entry on the premises on non-payment of the said rent, by the space of —— days next after the same shall become due; or, on nonperformance of any of the covenants to be contained in the said intended lease, on the part of the said C. D. to be performed, and also with all other usual and reasonable covenants.

For quiet enjoyment.

And it is also agreed, that the said intended lease shall contain a covenant, on the part of the said A. B., for quiet enjoyment by the said C. D. of the said messuage and premises, during the said term, upon payment of the said rent, and performance and observance of the covenants in such lease to be contained, and to be performed and kept.

Scipulations

And that the said C. D. further agrees with the by C. D. to accept such lease upon the terms and conditions aforesaid, and to execute a counterpart thereof, and also shall and will bear and pay the charges and expenses of these presents, and of such lease and counterpart thereof. In witness, &c.

(2.)

Another Form including the Use of Furniture.

Agreement.

Parties.

Premises.

MEMORANDUM of an agreement made and entered into this 5th day of November, 1838, BETWEEN A. B. of, &c. maltster, and C. D. of, &c. mercer, as follows; the said A. B. agrees by indenture of lease, to be executed on or before the 25th day of December next ensuing, to demise and let unto the said C. D. for the term of seven years, commencing, &c. ALL that messuage, tenement, or dwelling-house, situate, &c. together with the use of the furniture in and belonging to the said messuage, tenement, or dwelling-house, and which are particularised in the schedule or inventory hereunder written, (or

hereunto annexed, and signed by the said A. B.,) at and under the yearly rent of £40. free from taxes, Rent. (except land tax,) payable half yearly; and, in the Covenants said lease shall be contained covenants on the part of to be contained in the the said C. D. to pay the rent, to repair the pre- lease. mises, and to deliver up the same at the end of the said term, in good and tenantable repair; and also, to insure the said premises from loss by fire during the said term, in one of the insurance offices in, &c. to be approved of by the said A. B. for the sum of £ ---; and also, to rebuild or repair the said messuage and premises if destroyed or damaged by fire or otherwise; (e) and also, not to assign or underlet the said premises without the licence of the said A. B. with all other usual and reasonable covenants, and with a proviso for the re-entry of the said A.B. his heirs and assigns, in case of non-payment of the rent, for the space of thirty days after either of the days of payment, or of the non-performance of the covenants; and, that there shall be also contained in the said lease a covenant on the part of the said A. B. his heirs, executors and administrators, for quiet enjoyment by the said C. D. his executors, and administrators, of the said premises during the said term, upon payment of the rent and performance of the covenants. And it is hereby agreed between Expense of the said parties, that the expense of preparing these agreement and lease. presents and the said intended lease, and also the counterpart thereof, shall be paid and borne by the said parties equally. In witness, &c.

(3.)

Agreement for a Lease, with Stipulations as to Taxes and ground Rent.

MEMORANDUM made this —— day of, &c. BR- Parties. TWEEN A. B. of, &c. of the one part, and C. D. of,

⁽e) Here may be added, "and not to remove at any time or times, during the said term, intended to be demised, or cause or suffer to be removed, from out of the said messuage and premises, any of the furniture or fixtures, on any account whatsoever."

Agreement of parties.

Premises.

Term.

de-When terminable.

Rent.

Repairs.

Taxes.

Stipulation

&c. of the other part, as follows:—First, the said A. B. doth hereby agree at his own costs, with all convenient speed, to execute unto the said C. D. a lease of ALL that messuage or dwelling-house, situate, &c. with the appurtenances. To HOLD to

him, the said C. D., his executors, administrators, and assigns, from the twenty-fourth day of June now next ensuing, for the term of twenty-one years,

(determinable, nevertheless, at the end of the first seven years, at the will of the said C. D.,) (or at the will of either of them, the said A. B. or C. D.,) at

and under the yearly rent of, &c. payable quarterly, free from taxes, (except the land tax, (f) which

lease shall contain all the usual and reasonable covenants, and particularly certain covenants, that the said A. B. shall allow out of the first year's rent

of the said premises, the sum of, &c. towards the repairs thereof; And also, that he shall pay all the taxes in respect to the said house to Midsummer

next; and shall also indemnify the said C. D. and Ground rent his assigns, from the ground rent, during the said

term; and that there shall also be inserted in the said lease an exception(g) against damages happening by fire to the said premises, during the said term.

on the part In consideration whereof, the said C. D. doth of C. D. to hereby agree to accept such lease, and to execute a and execute counterpart thereof, when tendered to him for that

counterpart. purpose. As witness their hands the day and year

first above written.

(4.)

An Agreement for the Lease of Part of a House.

Parties.

AGREEMENT made and entered into this -

(f) In the absence of any express stipulation, as to which of the parties shall have power to determine the lease, it will be considered in the power

of the lessee — Dann v Spurrier, 3 B. and P. 399. Doe v. Dixon, 2 Rast. 15. Price v. Dyer, 17 Ves. 363.

(g) Unless this exception be inserted, the tenant would have to pay the land-tax, as a reservation of rent, "free from all, and all manner of taxes," has been held to extend to the land tax, and all taxes subsequently imposed.—Bradbury v. Wright Dougl 609. Amfold w White 1 R & M. posed.—Bradbury v. Wright, Dougl. 602. Amfield v. White, 1 R. & M. 946.

of, &c. BETWEEN A. B. of, &c. of the one part, and C. D. of, &c. of the other part, as follows.

The said A. B. agrees to let, and the said C. D. Agreement. agrees to take, ALL that room, being No. 7, on the Room. first floor, &c. being part and parcel of the house and premises of the said A. B., and now in his occupation, situate and being in the High-street, in the parish of D., in the county of E., as aforesaid, with all manner of conveniences, and appurtenances, to the same room belonging, and now used therewith; To HOLD for and during the term of nine Term. years, commencing at and from the twenty-fifth day of March next, at and under the yearly rent of £20, payable quarterly, the first payment thereof to be made on the twenty-fourth day of June next; AND the said C. D. hereby agrees to pay, or cause stipulation to be paid, the said yearly rent, according to the re- to pay rent. servation aforesaid; (except during such time as the said room may be uninhabitable, by reason of accidental fire;) And the said C. D. also agrees to paint, To paint. or cause to be painted, the outside of the windows belonging to the said room, with three coats of oil colours, once in every three years of the said term; And the said A. B. agrees to pay all taxes, charges, Taxes. or assessments, which are or may be taxed, charged, assessed, or imposed, or that may become payable during the said term; Ann also, that he the said To execute a A. B. shall and will, at the expense of the said lease. C. D., when thereunto requested by the said A. B., grant and execute, or cause to be granted and executed, unto the said C. D., his executors, and administrators, a valid lease of the said room and premises, for the said term, subject as aforesaid, which lease shall contain covenants and clauses, the substance of which are hereinbefore contained, as also all other customary covenants usually inserted in leases of this description; And it is Tenanttoenfurther agreed between the said parties, that, in the joy the room mean time, and until the said lease shall be exe- from year to cuted, in pursuance of this agreement, the said execution of A. B. shall occupy the said room, from the said the lease.

twenty-fifth day of March next, in the nature of a tenant, to the said A. B., from year to year, subject to the above stipulations, to be inserted in the said intended lease. (h) In witness, &c.

(5.)

Agreement for the Lease of a House, with particular Stipulations.

Stipulation to grant a lease

It is hereby stipulated and agreed BETWEEN and by A. B., of, &c. and C. D., of, &c. as follows: that the said A. B. shall at his expense, prepare and Of Premises execute a lease, whereby ALL that messuage or dwelling-house, situate in, &c. with the rights, members, and appurtenances, shall be demised and a yearly rent leased unto the said C. D. for the term of seven to be deposit- years, to commence on, &c. at and under the yearly

ed in the

hands of a rent of £100, payable yearly. And that such lease third person. shall be deposited in the hands of Mr. E. F. of, &c. (who has agreed to hold the same for the benefit of both the said parties during the term,) which lease shall contain covenants on the part of the said

C. D., the substance of which are as follows:—

The lease to contain covenants by tenant.

Forpayment of rent un-

That the said C. D, shall pay the rent yearly, less fire, &c. and every year during the said term, unless the premises shall happen to be burnt down or destroyed, (i) as also the taxes payable in respect to the same during the said term.

And also to repair the premises, (damage by fire, tempest, and other inevitable accidents excepted,)(j) And to yield and to yield and deliver up the same at the end of up in repair. the said term in good and tenantable repair, (except as aforesaid).

(A) If rent be paid before the execution of the lease, it creates a tenancy from year to year, although this clause should not be inserted: but not until then.—See Hamerton v. Steed, 3 B.& C. 478. Mann v. Lovejoy, 1

H. & M.—N. P. 365, see p. 41.

(i) But if the Lessee agrees to insure, add, "And also to insure the said premises from loss by fire, during the said term, in an insurance office to be approved of by the said A. B., for the sum of, &c.; and also to rebuild

and repair the said premises, if destroyed, or damaged by fire or otherwise."

(j) Unless these words be inserted, the tenant will be liable to rebuild the house, if the same should be destroyed. Bullock v. Dommitt, 6 T. R. 650.—Pym v. Blackburn, 3 Ves. 34. And liable to pay rent even with these words, in the absence of a stipulation not to de so.—Hare v. Groves, 3 Anst. 687.

And also a covenant not to assign the said pre-And not to mises, nor carry on, or suffered to be carried on, carry on of upon the said premises, any kind of trade, (or say fensive trades. any offensive or noisy trade,) without the licence and consent of the said A. B.

And which said lease shall also contain all other With other usual and usual and reasonable covenants, and also a proviso reasonable for the re-entry of the said A. B., his heirs and covenants. assigns, in case of the non-payment of the rent, for the space of thirty days after either of the said days appointed for payment, or of the non-performance of the covenants to be contained in the said lease.

And it is also agreed, that the said lease shall With a covecontain a covenant on the part of the said A. B., landlord for his heirs and assigns, for quiet enjoyment by the quiet enjoyment by tesaid C. D., his executors, and administrators, of the nant. said premises, during the said term, upon payment of the rent, and performance of the covenants.

And the said C. D. agrees to accept the said Tenant lease (so to be deposited as aforesaid), and execute cept of lease the same in regard to the covenants and stipulations to be contained therein, on his part to be performed and kept.

And lastly, it is hereby mutually agreed, by and The destrucbetween the said parties, that the destruction of the premises not said premises by fire or other cause shall vacate to vacate the agreement. this agreement (k) In witness, &c.

(6.)

Agreement for the Lease of a Farm and Lands.

ARTICLES of agreement made and entered into Parties. this — day of, &c. 1838, BETWEEN A. B. of, &c. esquire, for himself, his heirs, executors, administrators, and assigns, of the one part, and C. D. of, &c. for himself, his heirs, executors, and administrators, of the other part, in manner and form fol-

(k) Or say, "shall not in anywise vacate this agreement," (us it may be agreed upon between the parties). It seems advisable to insert this clause, to prevent any question, if the house should happen to be destroyed, before the commencement of the tenancy, whether a person shall be bound by his contract.—See Phillipson v. Leigh, 1 Esp. 397.

Agreement by the parlease.

lowing, that is to say: the said A. B. agrees to ties to grant grant, and the said C. D. agrees to accept, a lease and accept a of ALL that messuage, dwelling-house, and premises, with the several peices or parcels of land, hereditaments, and premises, thereunto belonging, called, &c. situate, &c. and which peices or parcels of land are more particularly set forth by their names and admeasurement in the scale or schedule hereunder written, together with the rights, members, and appurtenances thereunto belonging. (1) To hold for To HOLD the same for the term of twenty-one years, from the —— day of, &c. now next ensuing,

21 years.

Rent.

Covenants on thepart of

the lessee. Tenant pay rent half yearly. To repair.

to enter.

the pasture or clover

(or last past as the case may be,) at the yearly rent of £500, (m) to be paid half yearly, on the day of &c. and the —— day of, &c. now next ensuing, clear of all deductions, except land tax and And the said indenture of lease shall chief rent.

contain the following covenants, on the part of the said C. D. that is to say, the said C. D. to pay the rent as aforesaid, without any abatement except land tax and chief rent; and also to repair the premises, (being allowed materials,) and to make ditches for draining the water from off the cold and wet parts of the farm, and to yield up the same in re-To permit pair; and to permit the landlord to enter and view the state and condition of the premises; and to preserve the timber and other trees; and to forfeit £5. for every sapling that shall be negligently injured Not to mow or destroyed. Not to mow the pasture or clover land twice in any one year; and in case of mowing

Reservations.

(1) If there is to be a reservation as to timber, &c. add, "With an exception to be contained therein, reserving to the said A. B. all timber growing on the premises, with liberty to enter with servants or others, in the premises, to fell the same, and to sink sawpits for sawing thereof, and use the necessial to the same of the sary means for charcoaling the same, and to drag and carry away the same, making proper satisfaction for trespassing. And reserving liberty to plant young trees. And also reserving all mines and minerals, with power to work and carry away the same, paying the tenant for damage done thereby."

Eventual rents.

(m) In case of eventual rents, add, "And also, at and under the yearly rent or sum of £20, for every acre of meadow or pasture ground, part of the said premises, which has not been broken up for 20 years last past, which the said C. D., shall plough or break up, and so on in proportion for a greater or less quantity, the first payment thereof to be made on the day of, &cc. next." Or say, "And also the additional reserved rents of, &c.

the pasture or clover land for two years together, the ground twice said C. D. shall manure the same, by laying twelve year. good cart loads of manure to each acre; and not to take more than one crop of grain or pulse from off any of the land before the same shall be summer To manure fallowed, with two wagon loads of well-burnt lime. the lands To use the lands not restricted from being ploughed when fallowaccording to the most approved mode, and according to the custom of the country. Not to sow more than half an acre of hemp or flax in any one year, nor sow any rape or cole for seed. To spend all the straw &c. on the premises. Not to have more Number of acres to be than — acres of wheat or winter corn at the hadintillage Michaelmas seedness previous to quitting, and that to be upon prepared clover leys or fallow, and to keep and set up the same, and house his customary share thereof, in a barn upon the premises, but with liberty to thresh out the same on or before the —— day of, &c. next ensuing the time of quitting, leaving the straw on the premises; and to per- Incoming tenant to en-mit the landlord or incoming tenant in the last year ter upon the to enter upon the arable as soon as the crops have arable as the been taken off, to plough and manure the same, crops are off, with room for servants to lodge and diet, without extinguishing of rent. The said C. D. to plough And to any of the said lands at twelve shillings per acre, if lands. required by the said A. B.; and not to take any Not to take cattle or sheep to agist under a penalty of forty sheep to shillings for each beast, and five shillings for each agist. sheep; and to preserve the game, and to permit the game. his name to be used in informations or actions; and not to underlet or assign the said premises; and to lay upon the premises — tons of good clod Number of lime; and to keep two dogs for the said A. B.; and lime to be also to perform three days' carriage in each year for the premises repairs; and also to expend — per cent. on the aid rent yearly, in draining or other improvements, to be verified by vouchers, but subject to the approval of landlord in all cases; and also, that a Proviso for proviso shall be contained in the said lease, for re-re-entry. entry by the said A. B., in case of non-payment of

Covenants lord.

to dig marl.

wood.

For quiet enjoyment.

nants.

the rent within twenty days after any the times aforesaid, or non-performance of the covenants aforesaid, or on assigning or underletting. And it on the part is hereby further agreed, that the said intended lease shall contain the following covenants on the For tenant part of the said C. D., that is to say, that the said A. B. may at all times dig marl and clay for the improvement of the lands, and also sufficient gravel And for to keep the roads in repair; and also, that he may nant to cut underwood and brushwood, and lop pollard and brush- trees above the age of —— for reasonable estover, and as much rough timber as may be needful for the And for te- repairs of the said premises; and for the said C. D. nant to have to have the use of the second barn, with stabling for second barn. four horses, and the stack yard, until, &c. after the expiration of the said term, for threshing the last year's crop, leaving the straw on the premises, and also to have room for servents to lodge and diet in as aforesaid; and lastly, for the quiet enjoyment by the said C. D. of the farm and premises during And lease to the term; And it is hereby lastly agreed, that all contain all usual and reasonable covenants, (n) in respect to the farm, according to the nature and quality of the lands, and the custom of the country, and as counsel may advise in case of dispute, shall be inserted in the said intended lease, as well on the part of the said A. B. as of the said C. D.(o) witness, &c.

(o) Here may be inserted—And it is lastly agreed, between the said parties, that the said (lessor) shall (or say "shall not") be bound to produce or show his title to the said farm and lands. (See p. 42.)

⁽n) These will be considered such covenants as are usual in reference to the nature of the property, and the custom of the country, the term usual being understood as "reasonable" and "fair."—Prec. ch. 25. And a court of equity will enforce specific performance.—Boardman v. Mostyn, 6 Ves. 467.

MISCELLANEOUS FORMS.

(1.)

Agreement for letting a small Farm from Year to Year.

ARTICLES of agreement indented, made this Parties. - day of, &c., BETWEEN the (landlord) of, &c., for himself, his heirs, executors, and administrators, of the one part, and (tenant) for himself, his heirs, executors, and administrators, of the other part; THE said (landlord) in consideration of the rents, covenants, and agreements, hereinafter contained, on the part of the said (tenant) to be performed, doth hereby agree to let unto the said (tenant), and the said (tenant) agrees to take, ALL Premises. that messuage, &c., AND also, those several pieces or parcels of land called, &c., situate, &c., late in the occupation of, &c., containing, &c.; TOGETHER with all and singular houses, outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, paths, passages, waters, water-courses, feedings, commons, common of pasture, hedges, ditches, mounds, fences, profits, commodities, advantages, and appurtenances whatsoever, to the said messuage or dwellinghouse, buildings, pieces or parcels of land, and hereditaments, belonging or in anywise appertaining; BUT excepting unto the said (landlord), his Excepting heirs and assigns, and his and their servants, agents, power of and workmen, at his and their will and pleasure, full power to come into and upon the said premises, as well to view the trees and wood then standing upon the said premises, as also to fell, lop, top, cut down, stock up, hew, saw, square, cord or charcoal the same, upon a convenient part or parts of the said premises; and to make a saw-pit or saw-pits for sawing thereof; and thereupon, to get, dig, and

To dig turves, &c.

To plant.

take turves, earth, sand, and other materials necessary for charcoaling thereof; and with horses, wagons, carts, and carriages, to have, take, and carry away the same, to and for his and their own use and benefit, making reasonable satisfaction for trespasses, for timber fallen upon the said premises; and also full and free liberty, power, and authority, to come into and upon the said premises, or any part thereof, and in the woods, coppices, hedgerows, and other convenient places thereof, with servants and others, to graft any trees there growing, and there to set and plant any young trees or stocks of what nature or kind soever, as to him or them shall seem meet, and to fence and preserve the same; and also with free liberty, power, and authority, to and for the said (landlord), his heirs and assigns, and his and their agents, servants, stewards, and workmen, at any time, to search for, dig, mine, take, and carry away, the minerals or produce there found, at his and their will and pleasure, making reasonable satisfaction unto the said (tenant) for all damage which he may sustain To hold for thereby, or by reason or means thereof. the said messuage or dwelling-house, buildings, pieces or parcels of land, and other the premises hereby agreed to be let (except as hereinbefore is excepted) unto the said (lessee), his heirs, execu-

term.

(tenant) six calendar months' notice, in writing, of his intention to determine the same, (p) paying therefore yearly, and every year during the continuance of the tenancy, unto the said (landlord), the rent or sum of £ ---- of lawful money, current Rents. in Great Britain, by two equal half-yearly payments, (that is to say,) the twenty-ninth day of September, and the twenty-fifth day of March in every year,

tors, and administrators, from the twenty-fifth day of March last past, for the term of one whole year from thence next ensuing, and so on from year to year, until the said (landlord) shall give to the said

⁽p) "Or the said tenant shall give to the said landlord six calendar months' notice in writing," &c.

without any deduction whatsoever, (except for land-tax,) the first payment thereof to be made on the twenty-ninth day of September next ensuing; AND also paying yearly, and every year during the said tenancy, hereby agreed upon, unto the said (landlord) the sum of £5. of like lawful money, for Eventual every acre of meadow or pasture ground, part of the rents. premises, that has not been ploughed or broken up within the space of fifty years before the day of the date of these presents, which the said (tenant) shall plough or break up, and so in proportion for any greater or less quantity of such land than an acre; the said last-mentioned rent to be paid on the twentyfifth day of March in every year, without making any deduction or abatement thereout for taxes, or on any other account whatsoever, the first payment thereof to be made on the twenty-fifth day of March which shall first happen next after the breaking up And the said (tenant) doth hereby stipulation of the same. promise and agree, to and with the said (landlord), to pay rents. that he the said (tenant) shall and will well and truly pay, or cause to be paid, unto the said (landlord) the said yearly rents, on the days, and at times, and in manner and form, as the same are above made payable. And also, shall and will, at his and And to retheir own costs and charges, when and as often as pair. occasion shall require, well and sufficiently repair, sustain, uphold, maintain, and amend the said premises, and every part thereof, as well in houses, walls, coverings, timber, flooring, gates, posts, bars, stiles, hedges, ditches, and fences, as in all other needful and necessary reparation and amendment whatsoever, during the continuance of the said tenancy; AND at the end or other sooner determi- And to yield nation of the said term, the said premises in good up. and tenantable repair, shall and will peaceably and quietly yield up unto the said (landlord) without doing or suffering to be done therein, any waste, spoil, or devastation; AND shall and will during the continuance of the said term and tenancy, dress, To cultivate manure, improve, farm, cultivate, and manage, all cording to

good husbandry.

premises.

the course of and singular the said lands and premises, hereby agreed to be let, according to their several natures and qualities, agreeable to the rules of good husbandry, according to the best system, course, and manner, practised on land of the same nature and Stipulation quality in the neighbourhood thereof. And it is for landlord to enter in hereby further agreed, between the said parties default of hereto, that if the said half-yearly rent, respectively rents; or hereinbefore made payable, or either of them, or performance any part thereof, shall be behind or unpaid, in part lation of the or in the whole, by the space of thirty days after the agreement; same shall become due, and payable as aforesaid, ficiency of and no sufficient distress or distresses shall be distress; or c on parting found in or upon any part of the said demised pre-with the mises for lawring of the said demised premises, for levying sufficient to answer the same, with the arrears thereof, (if any,) and all costs and charges to be occasioned by the same; or if the said (tenant) shall give or turn over the said premises, or any part thereof, in any manner, to any person or persons whatsoever, for the term or tenancy hereby agreed upon, or any part thereof, without the licence or consent of the said (landlord) in writing, under his hand, first had and obtained; or if the said (lessee) shall not, from time to time, during the continuance of this tenancy, well and truly observe, perform, fulfill, and keep, all and singular the stipulations, conditions, and agreements which, on his part, is or are to be performed or kept, according to the true intent of these presents, THEN and thenceforth, for all or any of the causes aforesaid, it shall and may be lawful to and for the said (landlord) to enter into and upon the said premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, re-possess, and enjoy, as and in manner as before this agreement was entered into, anything hereinbefore contained to the contrary thereof in anywise AND the said (landlord) doth notwithstanding. for the ten- promise and agree, to and with the said (tenant), ably enjoy. by these presents, that he the said (tenant) duly paying the rents hereby made payable, and observ-

Stipulation antio peaceing and performing the clauses, stipulations, and agreements hereinbefore made and contained, which, on the part and behalf of the said (tenant), are or ought to be paid, observed, fulfilled, and kept, shall and lawfully may, peaceably and quietly, have, hold, occupy, possess, and enjoy, the said premises, hereby agreed to be let, with the appurtenances, (except as before-mentioned,) during the term or tenancy hereby agreed upon, without any loss, suit, trouble, eviction, disturbance, claim, or demand, of the said (landlord), or any person or persons lawfully claiming, or to claim from, by, under, or in trust for, him, them, or any of them. In witness, &c.

(2.)

Agreement for letting a Mill and Premises, containing Stipulations as to the Management of the Mill, Machinery, and Lands.

AGREEMENT made, &c., BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the Parties. other part, in manner and form following, (that is to say).

The said A. B., in consideration of the rents, Consideracovenants, and agreements, hereinafter mentioned, won of rents. and on the part of the said C. D., his heirs, executors, and administrators, to be paid, kept, done, and performed, DOTH hereby, for himself, his heirs, executors, administrators, and assigns, covenant and agree, to and with the said C. D., his executors and administrators, that he, the said A. B., his heirs and assigns, shall and will let to the said C. D., ALL Parcels. that messuage or tenement, with the water, cornmill, outbuildings, and premises, thereto belonging, now in the occupation of E. F.; AND also all the Machinery. fixtures, machinery, and things now set up, affixed, or fastened, on or about the same premises, and more particularly mentioned and described in a certain schedule or inventory hereunto annexed, (or

hereunder written); TOGETHER with the several pieces or parcels of land, to the said messuage and mill belonging, and usually held with the same, called the, &c.; TOGETHER with all outhouses, General edifices, buildings, flems, dams, weirs, pounds, words. pools, sluices, floodgates, ways, waters, watercourses, profits, privileges, hereditaments, and appurtenances whatsoever, to the same belonging. To hold for To HOLD the said messuage or tenements, mill, term. fixtures, machinery, pieces or parcels of land, hereditaments, and premises, unto the said C. D., his executors and administrators, from, &c., for the term of one year, at the net yearly rent or sum of, &c., payable quarterly, on, &c. And the said Covenants C. D., for himself, his heirs, executors, and admiby tenant. nistrators, doth hereby covenant, promise, and agree, with and to the said A. B., his heirs and assigns, in manner following, (that is to say,) that he the said A. B., his heirs, executors, and adminis-To become trators, shall and will take the before-mentioned. mill, with the fixtures, machinery, and things, with tenant. the lands and hereditaments belonging, at the said rent or sum of, &c., at the times and in manner hereinbefore appointed for the payment thereof. And to pay AND shall and will pay and discharge the land tax, (if any,) and all manner of other taxes, charges, rent. rates, assessments, and impositions whatsoever, which now are, or shall be, taxed, charged, assessed, or imposed, for, or in respect of, the said pre-And to re- mises, during the said term hereby granted. also, shall and will during the said term, at his and pair. their own costs and charges, well and effectually repair, amend, maintain, support, cleanse, and keep in repair, the said messuage or tenement, water corn-mill, ponds, pools, sluices, stiles, hedges, ditches, and fences, belonging to the said premises, And to yield and the same so well and sufficiently repaired, upat the end amended, supported, and kept in repair, together with the said fixtures, machinery, and things, and all such other materials and things which now are,

or during the said term shall be, by the said A. B.,

his heirs or assigns, set up and affixed to and upon the said premises, shall and will, peaceably and quietly, yield up unto the said A. B., his heirs and assigns, in as good plight and sound condition as they now are, the same having been viewed by E. E., of, &c., millwright. And it is hereby agreed, Forlandlord between the said parties hereto, that it shall and to enter and to enter and to may be lawful to and for the said A. B., his heirs or repairs. assigns, or his or their agents or workmen, at all reasonable times during the said term, to come into and upon the said premises, and every part thereof, to view the state and condition of the same; and if upon such view or examination there be found any defaults, decays, or wanting, or reparation, in or to the said messuage, tenement, water corn-mill, buildings, and premises, or any part thereof, so And to give hereby agreed to be let as aforesaid, to give or faults. leave notice thereof to the said C. D., his executors or administrators, to repair and amend the same, within the space of one calendar month, then next afterwards; and that within which said time, the said C. D., his executors, administrators, and assigns, shall and will effectually and substantially repair and amend the same accordingly. And in And upon case the said C.D., his executors, administrators, neglect by or assigns, shall neglect to repair and amend the repair, and said premises, within the time directed by such to tenant, notice, it shall be lawful for the said A. B., his and recover heirs or assigns, to cause to be repaired and amended the same, and to charge the costs and expenses attending it, to the said C. D., his executors or administrators; and that he the said C. D., his executors, or administrators and assigns, shall and will pay the amount thereof to the said A. B., his heirs, executors, administrators, or assigns, at the first of the said quarterly rent days, which shall next happen after the same shall have been so repaired by the said A. B., his heirs, executors, administrators, or assigns, as aforesaid; and, in default thereof, it shall be lawful for the said A. B., his executors, administrators, or assigns, to recover the

Not to un-

same by distress, or any other means by which rents are recoverable by law. And also, that he the said C. D., his executors and administrators, shall not, nor will, without the licence of the said A. B., his heirs or assigns, in writing, for that purpose first had and obtained, assign over the said hereditaments and premises, or any part thereof, during the term hereby granted to him, or agreed To cultivate so to be; but shall and will, during the said term, lands in a proper hus. cultivate and improve the said lands, hereditaments. and premises, in a proper husbandlike manner, and shall spend and bestow on the said demised premises all the hay, straw, fodder, muck, dung, soil, and compost that shall be received, gathered, and made thereon during the said term; (q) and shall

bandlike manner.

(q) Here may be added in respect to the land, "and shall not nor will plough, &c. plough nor break up any of the meadow or grass land belonging to the said As to mow. premises; and shall not nor will mow or take more than one crop of grassing, or actor or hay off the said premises during the said term; and in case the said ing contrary to the terms of the or grass land, so agreed to be let as aforesaid, then, and in that case, he or agreement they shall and will pay, or cause to be paid, to the said C. D., his heirs or to pay peassigns, when the same shall be by him or them demanded, for every acre
nalties. of the said land so ploughed or broken up, an additional rent of £50. per acre, over and above the rent recovered, and such additional rent to be in the nature of liquidated damages, and not by way of penalty, and to be recovered as such in any court of law or equity, or by distress, according to the usual course of remedy by distress for rent in arrears, as the said C. D., his heirs or assigns, shall seem meet; and shall and will, at the end of the said term, leave all the dung and manure that shall have been made, or shall be on the premises, for the use of the said A. B., his heirs or assigns, or the coming-in tenant or tenants of the said premises; AND also, shall and will, at the end of the said term, leave all the hay which shall be on the said premises, for the use of the said A. B., his heirs or assigns, or the in-coming tenant, upon being paid by him or them a reasonable sum for the same; and in case of dispute as to such value, the same to be affixed by arbitration as hereinafter mentioned." Then after same to be affixed by arbitration as hereinafter mentioned." Then after the covenant for peaceable enjoyment, add the clause of arbitration,—

"And it is hereby also mutually agreed, between the said parties, that if any dispute shall arise between them, as to the value of the hay so to be left on the said premises by the said C. D., (on his quitting as aforesaid,) for the said A. B., or his in-coming tenant, and they cannot agree to determine the same, they, the said A. B. and C. D., shall, for the ending of such dispute, appoint two indifferent persons (one to be chosen by each party) to value the hay, and determine such dispute within twenty days next after such reference; and if such two persons cannot agree, then the same to be decided by a third person, to be by the said two referees nominated for that purpose, who shall determine the same within twenty days next after his appointment. next after his appointment.

(Where the out-going tenant covenantes with landlord to leave the manure, and sell it to the in-coming tenant at a valuation to be made by certain persons, the effect of such covenant is to give the out-gone tenant a right of on-stand for his manure upon the farm, and the possession of and property and will, during the said term, keep open and cleanse all the drains and water-courses in and upon the said lands and premises, and every part thereof, in a good husbandlike manner. And the said A. B., doth hereby for himself, his heirs, executors, and administrators, promise and agree, to and with the said C. D., his executors or administrators, that he the said C. D., his executors and administrators, performing the covenants and agreements hereinbefore contained, on his and their parts and behalves, shall and may peaceably hold the said hereditaments and premises, for the term of one year, without any hinderance or interruption whatsoever by the said A. B., his heirs or assigns, or any person or persons whomsoever.

(3.)

An Agreement with Conditions for letting a Farm on Lease from Year to Year.(r)

CONDITIONS for letting of a messuage, dwelling- conditions. house, farm, lands, and premises, called, &c., situate, &c., and containing the several quantities comprised in the schedule hereunder written, (or kereunto annexed,) set opposite to the names of the several pieces or parcels of land, in manner hereinafter mentioned, the property of C. D. of, &c., Esquire.

The said premises to be held from year to year, Term. commencing on the —— day of, &c., at the annual rent of £ —, payable half-yearly, (including the tithes thereof,) determinable by either landlord or tenant giving six calendar months' notice in writing, previous to the —— day of, &c., in any one year.

in it remains in him in the meantime; and therefore, if the in-coming temest remove and use it before such valuation, he is answerable to the outgene tenant in trespass.—Beatty v. Gibbons, 16 East, 116.)

(r) Payment of rent, under an agreement for a lease, constitutes a tempor from year to year.—Doe d. Westmorland v. Smith, 1 M. & R. 137. And the landlord may distrain.—Mann v. Lovejoy; and see Knight v. Bennett, 11 Moore, 222. 3 Bing. 361. Cox v. Bent, 2 M. & P. 211. 5 Bing. 185. Doe d. Pritchard v. Dodd, 2 Nev. & M. 838. 5 B. & Adol.

Taxes.

Tenant—to bear all taxes for and in respect of

the said premises (except land tax).

Exception of mines, &co.

Landlord—reserves the mines, minerals, limestone, quarries, &c., with power to get, stack, convert coal, and carry away the same, making such reasonable satisfaction for all damages occasioned thereby, as shall be awarded by two indifferent persons, each party choosing one, or the umpire of such two persons.

Timber.

Landlord—reserves all timber, trees, and underwood, with privilege for the landlord, his servants, and workmen, to fall, convert, and carry away the same.

And of game

Landlord—reserves the game and fish on the said premises, with liberty to sport thereon with servants, and other attendance doing no wilful damage thereby.

To preserve game.

Tenant—to use his best endeavours to preserve the game, and to warn all persons from sporting or trespassing thereon, and to permit his name to be made use of in any information or informations, action or actions, that may be brought against any person or persons for sporting or trespassing thereon, at the landlord's expense.

To keep in repair.

Tenant—to keep and leave in good repair(s) the house, buildings, gardens, rails, and fences, belonging to the said premises, being allowed timber in the rough, bricks, tiles, and lime, at the kilns for that purpose, the tenant doing the carriage of the same; and also, in all cold and wet parts of the farm to As to ditches make the ditches to the fences at least four feet wide, and three feet deep, and as often as necessary cleanse out the same, and also the gutters used for the purpose of watering the meadow lands once in every year at the least, and to the end the same may be so kept, and left in repair in case the tenant shall neglect to do any of the repairs after having had three months' notice thereof, the landlord to be at liberty to do the same, and charge the cost

> (s) Substantial repair is what is required, not a literal performance of the contract.—Harris v. Jones, 1 M. & Rob. 173. An agreement to leave of farm as the tenant found it, is a contract to leave it in good repair.—Winn v. White, 2 W. Black. 840. An action may be maintained against a tenant at any time during the continuance of the term, for breaches committed upon a contenant to repair during each continuance. mitted upon a covenant to repair during such continuance. Luxumore v. Robson, 1 B. & A. 584.

thereof to the tenant, who shall pay the same at the first rent day following; in default of which, the landlord to recover the same by distress, or any other means by which rents are recoverable by

law.(t)

Tenant—to preserve the hedges on the said premi- To preserve ses, and only to plash them at proper seasons of the year; and when the land is in tillage, and to leave all young saplings that are likely to make timber, and to give notice to the steward in the month of September or October in each year, of all hedges intended to be plashed that season, to the end that such saplings may be marked to stand, the tenant afterwards to forfeit forty shillings for every one that may be wilfully or negligently injured or destroved.

Tenant—to preserve the fruit trees from being To preserve injured or destroyed, and not to top, lop, or injure iros. my of the timber or other trees growing on the said premises, under the penalty of five pounds per tree

(willows excepted).

Tenant—not to plough or break up any of the kinds described in the under-written particulars or schedule, as meadow and pasture, under the penalty of thirty pounds per acre as additional rent.(u)

Tenant—not to mow any of the meadow, pasture, Not to mow or clover ground, twice in any one year, under the any meadow

(f) A yearly tenant, in the absence of any stipulation to the contrary, is only bound to fair and tenantable repairs, so far as to prevent waste or decay of the premises, and not substantial and lasting repairs.—2 Esp. 590. And in such case is only bound to use the premises in a husbandlike manner, but no further.—Horsefall v. Mather, Holt, 7; and see Anworth v. Johnson, 6 C. & P. 239. And according to the case of Torriano v. Young, 6 C. & P. 8, a tenant from year to year is not liable to permissive waste, nor to make good mere wear and tear.

(w) Or thus:—tenant not to plough or break up any of the lands called or Not to break known by the names of, &c., under the penalty of, &c., per acre, additional up lands.

rent: or, tenant in the spring season of 18 to lay down for permanent pas- To lay down

ture the field called, &c., part of the said farm and premises, with at least four a certain

pounds of good, sound red clover seed, four pounds of trefoil, eight pounds field for pas
of white Dutch clover seed, and one peck of fine hay seeds, to an acre; the ture. same land being prepared and made clean, fit and proper for the same, by
— different ploughings and sufficient harrowings, and afterwards not to
be broken up under the like penalty; and to manure the said field in the
last year after the same shall be so laid down, with twelve cubical yards of well reduced dung to an acre, or a compost of muck, lime, and soil, equal thereto.

pasture or clover ground, twice in any one year.

penalty of twenty pounds per acre; and within nine months after mowing any of the meadow, pasture, or clover ground, a second time, and so alternately to manure the same with twelve yards of good rotten dung, or with twenty yards of well-prepared compost, containing six yards of rotten dung, or two tons and a half of well-burnt lime, to each and every acre, or fertilize the same by means of water, to the satisfaction of the landlord.

Not to take up, before same the lowed.

Tenant—not to take more than—crops of grain more than or pulse from off any of the land allowed to be ploughed grain allow- on the breaking up thereof, before the same shall be ploughed on well summer fallowed; which fallowing to be perthe breaking formed in the next summer, by at least four ploughings, and sufficient harrowings between each shall be ploughing, one such ploughing to be done before the month of April, and other three before, &c., nor to take more than one crop after such fallow before the lands be laid down again, except a turnip crop, (to be well hand-hoed,) or some other vegetable (potatoes excepted) to be eaten or consumed on the premises in a green state, or ploughed in for manure; the land so fallowed to be sown with barley the spring following, then to be laid down with fourteen pounds of good sound seeds per acre, in one of the following proportions, viz., five pounds of white Dutch clover, nine pounds of red clover, and one peck of fine rye grass: or, four pounds of white Dutch, four pounds of trefoil, and six pounds of red clover, at the option of the tenant, the said lands not to be broken up again before the Michaelmas seedness after the expiration of two years, from the time of laying down, except the seeds should fail, in which case, with the consent of the landlord or steward, the land to be sown with beans in the spring previous to the time stipulated for breaking it up, and afterwards sown with wheat, first being limed with five tons of good well-burnt lime to each acre so sown, and afterwards fallowed in the regular course above mentioned.

Tenant—to manure the lands, when fallowed, with To manure

fourteen cubical yards of well-reduced rotten dung, lands when or five tons of well-burnt lime to each acre, or with

some other purchased manure of equal value.

Tenant—to use and employ all the lands not here- To use the before restricted from being ploughed, and cultivate stricted from the same in the regular mode of husbandry as before-being ploughed in mentioned, (v) and to manure all the said premises a regular in a good and husbandlike manner, and not to ex-mode of husceed in any one year — acres of wheat or winter

Tenant—not to sow more than half an acre of hemp Not to sow or flax in any one year, nor sow any rape or cole for half an acre seed, nor have more than an acre of clover for seed, of flax, &c. under the penalty of thirty pounds per acre addi-

Tenant—to spend yearly, and every year, all the To spend all hay, straw, and fodder, and also the haum (such haum reduced into to be properly reduced into muck in the fold-yard muck, on the on the premises); and at the time of quitting the premises. said premises, to leave thereon all the hay, straw, fodder, and haum, (such haum properly reduced into muck in the fold-yard on the said premises,) being allowed liberty to thrash the last year's crop, and to eat and consume the straw and fodder until the - day of, &c., after quitting; also the use of a piece of land for a boozy-pasture, and a lodgingroom in the house for a servant to reside in till that time, to be fixed upon by the landlord. (w)

Tenant—to lay upon the premises in each year, Lime. during his holding them, at least ---- tons of wellburnt lime, or some other purchased manure of equal value, which shall be made appear by proper vouchers to the satisfaction of the landlord.

Tenant—to lay out in each year of his occupying To expend

(v) No inquiry can be made as to the custom of the country where there is a provision made by a written agreement.—Liebenrood v. Vines, 1 Mer. 7.

⁽w) Or thus: tenant to spend yearly, and every year, all the produce upon the premises, and, at the time of quitting, to leave all the manure, straw, and compost thereon, for the use of the landlord or succeeding tenant, being allowed liberty of threshing the last year's produce, and eating his straw and fodder until the May day after quitting, also the use of a piece of land for a boozy-pasture until that time.

in draining the said premises, ---- per cent on his said rent in draining, watering meadows, or some other permanent improvement, to be verified by proper vouchers to the satisfaction of landlord or his agent; and if any excess of expenditure happens in any one year, the said the excess to be carried to the credit of the ensuing year or years.

Tenant(x)—to be permitted to take and carry Hay. away ---- tons of hay when he quits, without any

consideration being paid for the same.

Quantity of wheat or winter corn.

Tenant—not to sow more than—acres of wheat or winter corn at the Michaelmas seedness before quitting, (or say, giving notice to quit,) and that to be upon clover leys of the second year, and to reap,(y) bind, and set up the same, and house his customary share thereof, (being two thirds,) in a barn or stack-yard on the premises, with liberty to thrash out the same between the —— day of, &c., and the --- day of, &c., leaving the straw and chaff arising therefrom for the benefit of the landlord, or succeeding tenant.

Tenant—to hay up the meadow and clover of the first year's growth, on the first day of December before quitting, and to fence the same from that time; and to allow landlord or succeeding tenant to enter upon and plough the land that may be necessary for a Lent grain or turnip crop, and to do

Hay.

(x) If the quantity of hay and straw to be left unconsumed on the premises by the tenant has been, by a previous condition, stipulated for, and if the tenant is to be at liberty to carry off a certain quantity of hay, say,

"tenant, notwithstanding the above condition, to leave unconsumed on the premises — tons of good hay, and — thraves of good bolting straw, to be permitted, to take," &c. (as above).

(y) Before this condition may be added, "tenant, yearly, to cultivate the clover leys and corn stubbles, as summer fallow, for turnips, and to sow the same between the first day of June, and the twentieth day of July; and at all events to premare, in a husbandlike manner, and sow with turn and at all events to prepare, in a husbandlike manner, and sow with turnips, at least —— acres of the said premises, in every year, which, if produced, to be regularly hand-hoed, and the lands on which such turnips may be growing, not to be sown with winter corn, but to be preserved to sow with Lent grain the ensuing Lent seedness, when the same shall be laid down with clover and grass seeds, as before-mentioned.

Or thus: "the tenant not to sow more than ——acres of winter corn at the

Michaelmas seedness, after receiving or giving notice, and that to be upon lands in that year well summer fallowed, and manured as aforesaid, or upon clean or proper clover leys of the first or second year's growth; and

to reap," &cc. (as above).

any other usual act of husbandry after the first day of November previous to quitting.(z)

Tenant—if required, to plough any of the said Ploughing. lands, and to be paid for the same after the rate of

twelve shillings an acre.

Tenant—not to take any horses, cattle, or sheep, Agisting. to agist without the consent of landlord, under the penalty of forty shillings for each horse or beast, and five shillings for each sheep.

Tenant—to provide and deliver at —, between straw to Michaelmas and Lady-day in each year, (if required,) landlord. - tons (or say thraves) of good, sweet, bolting straw, (if thraves, say of the customary size,) and to perform ---- days' carriage in every year, with a wagon or carts and ----- horses, and two able men, in the carriage of coal or lime for the landlord, without being paid for the same.

Tenant—in case he holds the tithes of the said Tithes. premises, and is under notice to quit the same premises, not to retain the tithes longer than he holds the farm, but to relinquish the said bargain of tithes at the same rent as he holds them at to the land-

lord, or his succeeding tenant.(a)

Tenant—in case of quitting by notice from land- Quitting. lord, within ---- years, to be allowed the costs of any under-draining he may have done in an effectual manner with stone or tiles, under the direction of the landlord or his agent, within the last ---- years, (or last — months before quitting,) exclusive of carriage; also the cost of any lime or purchased manure he may have laid upon the premises within the last — year before the quitting, provided the quantity so laid on shall be at the rate in proportion of, &c., before-mentioned; also for any lime mixed

ther usual and requisite accommodation.

(c) Here may be inserted, "tenant to under-drain, in an effectual and reckmanlike manner, at least ——roods in each year, in such parts of the said premises as the landlord or his agent may direct;" and then add, "in case of quitting," &c.

⁽z) If the contract contain no stipulation as to the mode of quitting, the off-going tenant is entitled to his away-going crop as usual, although the terms of holding may be inconsistent with the custom.—Holding v. Pigot, 5 M. & P. 247; also a room in the house for his servants, and also stabling on the premises for his horses, with straw to litter down, with all

with soil as a compost, and not laid upon the land, together with the costs and charges attending the

mixing and preparing the same. (δ)

Clover.

Tenant—to be paid for the clover of the last year's growth, what the seeds were worth at the time of sowing if the same shall have been laid up and

preserved as aforesaid.(c)

General cuitivation.

Tenant—in all other respects to manure the lands in a good and husbandlike manner, and at all times to reside on the premises, under the penalty of fifty pounds for every month's absence without leave of the landlord. (d)

The Schedule above referred to.

NAMES AND ACREAGE OF THE SEVERAL PIECES OF LAND.

Arable.		Meadow and Pasture.		
Longlands 9	P. 3 12	Square Meadow 10 2	P. 10	

Memoranting.

MEMORANDUM, this - day of, &c., that I, dum of let C. D., of, &c., (the tenant,) do agree with A. B., of, &c., Esquire, to take and hold the before-mentioned farm, lands, and premises, at the rents and subject to the conditions hereinbefore contained; and that I will execute any further agreement, or a lease and counterpart containing the same, and all covenants usually inserted between landlord and tenant, whenever I may be required so to do, to be drawn up by E. F., of, &c., solicitor: one part thereof to be paid for by me (if I require a part);

(c) Here may be added, "tenant not to let or assign over the premises, or any part thereof, under the penalty of," &c.
(d) This clause may be so framed, that the lease shall become forfeited

⁽b) Here may be added, "tenant, once in every year at least, to cut and. brush up the hedges against the roads which pass through or adjoin the

upon the tenant's ceasing to inhabit the farm-house.—Doe d. Dockwood v. Clarke, 8 East, 185; and see Doe d. Norfolk v. Hawke, 2 East, 481. And may form part of the clause in the lease for making void the term in neglecting such residence.

and I, the said A. B., do agree and set the said premises to the said C. D. accordingly. In witness, &c.

(4.)

Agreement by a Lessee for letting a Farm to an Under-tenant.(e)

AGREEMENT made and entered into this —— day Parties. of, &c., BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part, as follows.

First, the said A. B., in consideration of the rents Consideraand covenants hereinafter mentioned, and reserved tion. on the part and behalf of the said C. D., to be paid and performed, doth covenant, promise, grant, and agree, to and with the said C. D., to let; and that it shall and may be lawful, to and for the said C. D., his executors, administrators, and assigns, to have, hold, possess, and enjoy, from the day of, &c., next ensuing, ALL that farm, called, &c., with the several Tenant to hold premipieces or parcels of land thereunto belonging, ses. situate, &c., together with the buildings, hereditaments, and premises, with the appurtenances thereunto belonging, and now or late in the possession of the said A. B., for the term of one year, and that Forone year without any hinderance or molestation whatsoever by him the said A. B., or by any person or persons whomsoever, claiming under him; and the same Tenant to be farm and premises to be so held, free and clear of indemnified from taxes. and from all taxes, rates, assessments, and impositions whatsoever, which now are, or which, during the term, shall be, imposed upon, or in respect of, the said premises, and which the said A. B. hereby agrees to indemnify, and save harmless the said C. D. therefrom.

And it is hereby agreed, between the said C.D. to carry parties, that the said C. D. shall be at liberty to hay off the

⁽c) The under-tenant, if he neglects to inquire into the covenants of the signal lease, is, notwithstanding, bound by them; at least, he has constructive notice of all usual covenants.—Flight v. Barton, 3 Mylne & K. 283; and see Cosser v. Collinge, 3 Mylne & K. 283.

promises at carry off the said premises, at the end of the said the end of term, all the hay gathered off the said farm during Tenant to such period; and also shall and will, until the use a certain day of, &c., next after the expiration of the said close of land tray of, etc., next after the expiration of an after the ex- term, have, hold, and enjoy, all that close, called, piration of &c., part and parcel of the said hereditaments, to be spending of used for the spreading of the straw that shall be strew. gathered off the said farm, and have the use of the barn, situate on the east side of the farm-house, for

Stipulation for payment of rents.

the use of him, the said C. D., as off-going tenant. And the said C. D. promises and agrees, to and with the said A. B., that he the said C. D. shall and will, well and truly pay, or cause to be paid, unto the said A. B., the rent or sum of £100, at or upon the —— day of, &c., and the —— day of, &c., by even and equal portions, the first payment thereof to be made on the —— day of, &c., next ensuing.

And an adfor ploughor pasture.

And also shall and will pay, or cause to be paid, ditional rent unto the said A. B., his executors, administrators, ing meadow and assigns, the further sum of £10. for each and every acre of meadow or pasture land belonging to the said farm, which he, the said C. D. his executors, administrators, or assigns, shall plough, break up, or convert into tillage, in addition to the said rent, and the first payment of such additional rent to be made on the same day as the succeeding halfyear's payment of the said annual rent shall become due, subsequent to such ploughing or breaking up, to be recovered by the said A. B. by distress as rent in arrear, or in the nature of liquidated damages.

Fences.

And also shall and will keep the fences belonging to the said premises in good and sufficient repair; and the same so repaired, together with all and singular the said farm and premises, shall and will, at the end of the said term, peaceably and quietly yield up unto the said C. D., his executors, administrators, or assigns.

To spend straw on the premises.

And further, that he the said A. B. shall and will, in a good and husbandlike manner, spend all the straw, compost, and soil, which now is, or here-

after, during the said term, shall arise, or be made upon the said farm, lands, and premises, upon such part or parts of the said farm as shall most require

And lastly, the said C. D. agrees with the said And tenant A. B., that he, the said C. D., shall and will well wheat now and truly pay, or cause to be paid, unto the said sown. A. B., his executors, administrators, or assigns, such sum or sums of money, for the wheat now sown upon the farm, as E. F., of, &c., (being the person mutually agreed upon between the parties,) shall, in writing, on or before, &c., direct, and also on the days and times appointed by him the said E. F., (f) for payment of the same. In witness, &c.

(5.)

Agreement containing Conditions for a Lease of Mines.

CONDITIONS for a lease to be made and granted by A. B., of, &c., to C. D., of, &c., of the mines, layers, veins, seams, and strata of coal and brick clay, to be found or discovered in, under, or upon, ALL that the manor, &c., situate, &c., for the term of twenty-one years.

The mines to be held by the said C. D. for the Term. term of twenty-one years, commencing from the - day of, &c., at and under the several rents and royalties, to be payable quarterly, on the --- day Payable of, &c., the —— day of, &c., the —— day of, &c., and the day of, &c., in every year, without any deduction, the first payment to be made on the ---day of, &c., as hereinafter mentioned, and subject to the stipulations hereinafter contained.

Lessee—to have power to enter upon the said lands Lessee to for the purpose of working the said mines under the have power to enter and same, and to erect houses for workmen, and other work the conveniences for coal, gear, and utensils, with mines.

⁽f) Here may be added the clause of arbitration, if required, as in p. 68, n.

liberty to remove, alter, pull down, and carry away, And to dis the engines or erections; and also liberty to dig clay for making clay for making bricks for the bridges, pits, and works, to be used for the said mines and collieries; bricks. and also to execute all other acts and things necessary for the working the said mines.(g)

Rents to be reserved.

Lessee—to pay one shilling for every ton weight of coal which shall be gotten, during the term, from the said premises.

The further sum of four-pence for every ton of

slack.

The further sum of two-pence for every sack of

The further sum of one shilling and sixpence for every thousand of bricks, tiles, or quarries, which shall be made, and so in proportion for any greater or less quantity of the said articles respectively.(h)

other seams not being

(g) Here may be added, in case other seams are to be excepted out of the As to a reintended demise, "but reserving out of the said premises all other seams,
servation of intended demise," but reserving out of the said premises all other seams, strata, veins, and mines of iron-stone, and all other mines, minerals, fire-clay, stone, and earth, of what nature or kind soever, not being parcel of part of those to be leased. the said mines of coal and brick-clay, with liberty for the lessor to enter and work the same, and to sink shafts and pits, and other necessary erections for such purpose, but not to obstruct or hinder the lessee in the enjoyment of the premises.

ejes.

(A) In case of a deficiency in the amount required for rents and royal-Asto making ties by the lessor in any one quarter, add, "lessee, in case of either of the two quarters during the term of six months, from the —— day of, &c., the said rent, reservation, or royalty, to be reserved for the said large coal, shall fall short in either of these quarters of a year, of the sum of & ______, as and for the said rent or royalty as aforesaid, the lessee to pay such further additional sums of money as the said rents, reservations, or royalties, as for the said large coal, shall have fallen short, and to be paid upon such day as shall conclude the quarter wherein such deficiency shall have hap-pened; nevertheless, the lessee to be at liberty, in any succeeding quarter, when the mine rent shall exceed the quarterly sum of £ ——, to make up the former shorts by selling such quantity of the said large coal as shall be sufficient to reimburse himself the moneys he shall have paid to make up the deficiency aforesaid, without paying any rent for such last mentioned quantity. tioned quantity. And in case, in any one quarter, during the term of one year, to be computed from the —— day of, &c., in the year 18, a deficiency shall happen in the said rent, not amounting to £——, the lesses to make up such deficiency, and to make up former shorts in every succeeding questions are a second or said to make up former shorts in every succeeding questions. ceeding quarter of a year, by sale of the large coal as aforesaid, without paying additional rent for the same; and from and after the —— day of, &c., and until the said mines shall be completely worked out, or the lease ended, and such rent or reservation for the large coal shall not have amounted to the sum of \mathcal{L} —, such deficiency to be paid by the lesses in manner aforesaid, and to be made up by sale of the large coal in any succeeding quarter of a year, within the period of two years next following, when the said rent shall exceed the last mentioned stipulated quarterly sum of, &c., and without any rent or royalty for the same. And in case of any increase, during the term, in the present selling prices of coals,

Lessee—not to convert any part of the large vert large coal into coke, or sell the same as slack.

coal.

Lessee—to convert into coke and slack such The usual coals only as which, according to the custom of the converted country, are usually converted into cokes.

Lessee—not to pay rents or royalties for any Not to pay slack consumed by engines necessarily used in or used by the on the premises; nor for the customary coals used workmen. by the workmen for their domestic purposes; nor for such coals as may be used by him in making bricks for drains, tunnels, soughs, or walls, for preventing the communication of damps or fire, or in making any building or erection on the premises

for the purposes aforesaid.

Lessee—not to pay the said rents or royalties in Not to pay case the said mines or collieries shall at any time case of susbe suspended by any fault in the mines, or by acci-pension of mines by sodent through fire, or other inevitable accident, for eident. one quarter of a year, but not for a less period, provided the lessee shall give the lessor notice in

writing of every such suspension.

Lessee—to keep, or cause to be kept, on some To keep acpart of the lands to be demised, open and regular counts. accounts in writing, to be made from time to time, of the quantity of coal, slack, and cokes, bricks, tiles, and clay, to be raised, gotten, sold, or employed, from, out of, upon, or about, the said mines and premises, specifying particularly the times or dates of such getting, sales, uses, conversions, or employments, and the number of boats, and the names of the steerers, by which the same are sent away, and the several and respective quantities used, employed, expended, and consumed, in making of bricks or tiles, converting of the said coal into coke, manufacturing tools, machines, and

coke, slack, bricks, tiles, and quarries, over and above the following prices, that is so say, for large coals, seven shillings per ton; for slack, one shilling and seven-pence; and for bricks, twenty-eight shillings per thousand; the lessee to pay, in addition to the several fixed royalties or mine rents to be reserved and made payable, one fourth part of such advance, or instead price, as the said last mentioned articles shall be sold, over and above the prices of, &c., above mentioned, except any increase which may happen by any future tax upon coals or bricks.

engines, for the use of the said works, and in the houses or habitations of workmen, or in or upon quays, wharfs, walls, furnaces, soughs, drains, erections, and buildings, as aforesaid; such entries of the quantities of coals, slack, and cokes, bricks, tiles, and clay, to be made in the books of account before any of the several articles shall have been removed off the premises. And shall once in every quarter at least in each year, deliver to the said lessor, or his agent or agents, true copies of such accounts, for the custody, perusal, and approbation, of the lessor; and to permit lessor to employ and keep, at his own expense, agents, check-clerks, and inspectors, to attend and reside on the premises as he shall think fit.

To raise coals by means of shafts.

Lessee—to raise all coals, slack, and clay, by means of shafts or pits, to be sunk on the said premises, or some part or parts thereof, and not upon, or in communication with, any other land whatsoever.

Power to **aba**ndon giving notice

Lessee—to have power to abandon or relinquish mines upon the mines, and the future workings thereof, upon giving six calendar months' notice in writing, of such his intention, and that lessor shall re-enter and re-possess the same, and in such case the term to become void. And in case the lessee shall so abandon the mines, to leave open all the pits and shafts which shall have been sunk for the use of the lessor, with all the bricks and curbs therein, and insets built up in perfect order, and also with all the said shafts arched over with bricks in a substantial manner, at the expense of him the lessee.

Power for the lessor engines, &c.

Lessor—to have power, upon such abandonment to purchase by the lessee as aforesaid, or at the expiration, or other sooner determination, of the said term, to purchase all or any of the engines, whimsies, gins, or other erections, so to be made, built, or erected, in or upon the premises by the lessee, and authorised to be carried away or removed, or any of the ropes, rollers, or other movable implements, belonging to the said works, upon giving three calendar

months' notice in writing, of such his intention, next before the term fixed for such abandonment by the notice so to be given by the lessee as aforesaid, or other sooner determination of the term, and for the lessor thereupon to enter upon and take all or any of the said engines, and other matters and things as aforesaid, as he shall think proper to purchase, on paying such price for the same as shall, in case of disagreement between the parties, be awarded by arbitration or umpirage in the usual

Lessee—to work, get, and raise, from and out of Quantities the said mines, the quantity of fifty tons of large coals to be rose at at least, in each and every week during the term of times. six months, to be computed from the twenty-fourth day of June now next ensuing, so that thereby the royalties and premises reserved as to the large coals, during the said period of six months, shall amount to the full and clear sum of £ --- at the least, in each such quarter, exclusive of the said royalties, payable for slack, cokes, and brick. And also to get and raise weekly, and every week during the term of one year, to be computed from the twentyfifth day of December following, from and out of the said mines, the quantity of one hundred tons of large coal at least, during the continuance of the said last mentioned term of, &c., so that thereby the royalties and premises, reserved in respect to the said large coals, during the said last mentioned period of twelve months, shall amount to the full and clear sum of £ —— at the least, in each of such last mentioned quarters of a year, exclusive of the royalties hereinbefore made payable for such coke and bricks; and also weekly, and every week after that period, during the remainder of the term, from and after the —— day of, &c., or until the said mines shall be completely worked out, get and raise, from and out of the said mines, the quantity of two hundred tons of large coals at least, so that thereby the royalties and premises hereinbefore stipulated to be reserved, in respect of the said large coals,

during the period last mentioned, shall amount to the full and clear sum of \pounds —— at least, in each and every such quarters of a year, exclusive of the royalties so stipulated to be reserved for slack, cokes, and bricks; or that the lessee will pay the lessor for the said respective weekly quantities of large coal, during the three several periods last mentioned, so as to make the said royalties therefrom, within the several periods last mentioned, amount unto the several respective sums of money before mentioned, and expressed in each and every quarter during the respective periods aforesaid, and the same to be paid upon each of the quarter days, although less quantities of the said large coals shall happen to be raised in each preceding quarter, unless such deficiency shall be occasioned by reason of the obstructions by inevitable accidents as aforesaid.

Taxes.

Lessee—to pay all taxes, rates, levies, and impositions whatsoever, parliamentary and parochial.

Mines to be worked in a

Lessee—to work the mines in a good and workproper man. manlike manner, according to the most approved mode of working and getting mines in the neighbourhood, and to constantly, during the term, employ a competent number of workmen and horses, cattle, carts, carriages, &c., necessary for the purpose, and tending to their mutual benefit; and to work the said mines by means of shafts to be sunk on the premises, and not by means of any other shafts in any adjoining lands.

The lessee to

Lessee—to keep on the premises complete books keep books of account in writing, of the several quantities of and to per-large coal, slack, cokes, and bricks, to be raised and mit inspection and gotten, sold or disposed of, out of the mines, and copies to be that such books, &c., shall be open to the inspection of the lessor, and his agents and clerks, and to permit them to take extracts or copies therefrom.

Power for lessor to enter for viewing the state and condition.

Lessee—to permit the lessor and his agents, &c., to enter into and upon the premises, and the buildings and erections, &c., to be made thereon as aforesaid, to view, search, and examine, the state and condition of the same, and the manner the same are carried on.

Lessee—to leave open, and protect with piles To leave and eye-pillars, with inlets therein, built up with but probrick and mortar, all the pits and shafts so to be tected. made, and sunk with the bricks and curbs therein, for the benefit of the lessor.

Lessee—to deliver quarterly to the lessor, or his To deliver agents, correct accounts, in writing, of the coals, accounts. slack, and brick, raised and gotten, for the perusal and approbation of the said lessor or his agents.

Lessee-not to assign or underlet the said mines, Not to aswithout the consent of the said lessor in writing. (i) sign or underlet.

(6.)

A short Form of Agreement, with Conditions for letting a Farm.

AGREEMENT and conditions entered into this day of, &c., BETWEEN the (landlord) of, &c., of the one part, and the (tenant) of, &c., of the other part.

The said (landlord) agrees to let, and the said Agreement. (tenant) agrees to take, and become tenant of, ALL Premises. that messuage, farm, lands, and premises, belonging to the said (landlord), situate, &c., and called, &c., and containing, &c., and now in the occupation of, &c., with the appurtenances, for the term of one year, and so on from year to year, until the usual six months' notice to quit shall be given by either of the said parties to the other of them, the said letting and renting to be upon the terms and conditions following, that is to say:-

The tenant to do all material repairs of buildings; Conditions.

⁽i) The following memorandum may be written under the conditions:

-Memorandum: The above-mentioned (lessor) agrees to demise and lease,
and the above-mentioned (lessee) agrees to take, all the above-mentioned mines and premises, for the term, and upon the conditions, above stated, with all other usual stipulations and covenants (and with powers of distress and entry in case of non-payment of the rents or royalties after thirty days from the time for payment) to be contained in a lease and counterpart to be forthwith prepared and executed by the said parties at their joint expense. Dated, &c.

up meadow land.

manner. gamekeeppremises, tenant quit-

Not to sow eight years' growth; not to sow two wheat crops more than successively, under the penalty of £ ---- per acre; two wheat crops suc not to sow more than one fourth of the arable land eessively. with wheat during the last year. To quit the whole Not to sow of the premises hereby demised, as well as the but one of the premises hereby demised, as well as the fourth of the whole of the house, homestall, and land, at the example land the last year. piration of six calendar months' notice to quit; and As to quit the growing crops of wheat to be sold to the inting.

witness, &c.

To pay rent to pay the rent half-yearly, without deduction (except for land tax); to pay all rates and taxes Not to break whatsoever (except the land tax). Not to break up, or convert into tillage, any meadow or pasture land, under the penalty of £20 an acre, and so in proportion for any greater or less quantity than an To manage the arable land in a good husbandarable land manlike manner. Not to underlet any part of the husbandlike premises without the consent of the said (landlord), derlet.
Not to sell hay, straw, stover, or stubble; Not to sow or set hay, &c.

more than _____ acres of the Not to sow potatoes, carrots, cabbages, or any other vegetable, oertain num- (except turnips,) which are always to be fed, and not ber of acres carried of. To allow (landlord's) gamekeeper and bailiffs to come upon any part of the grounds hereby sporting by demised, at any time he or they may think proper, landlord's for the purpose of handlord's for the purpose of hunting, shooting, coursing, and killing of game; To imbarn, stack, and lay upon To stack the the premises, and not elsewhere, all the hay, straw, premises, and other produce thereof, and all the dung and the dung on manure arising therefrom, to carry out and spread upon such parts of the premises as most require it. The remain- The dung and manure arising from the crop of the ing dung to last year, or any other dung which may not have fold-yard on been carried out at the time of quitting, to be left upon the farm-yard, or upon whatever part of the said demised premises the same may be, for the Nottoinjure landlord's use. Not to cut-down, grub-up, lop, or prune, any timber trees, or such as are likely to Not to lop become timber; not to lop any pollard tree under

coming tenant at valuation, and the amount of such

valuation to be paid at the ensuing harvest.

(7.)

Agreement upon engaging a Bailiff or Steward for managing Farms.

ARTICLES of agreement made, &c., BETWEEN A. B., Parties. of, &c., of the one part, and C. D., of, &c., of the other part.

WHEREAS, &c. (recite that the said C. D., at the Rocital. request of the said A. B., has agreed to undertake the management of the farms and lands of the said A. B., situate at E., in the county of S., and recieve as a salary the sum of £ ----). Now these presents witness, that, for the considera- Covenant to tions hereinafter mentioned, he, the said C. D., liff. become baidoth hereby covenant, promise, and agree, with and to the said A. B., his executors, administrators, and assigns, that he, the said C.D., shall and will, at all times and seasons, from henceforth, and so long as he shall continue the bailiff, land-steward, or agent, of the said A. B., by virtue of these presents, manage, cultivate, and improve, according to the best of his abilities, skill, and knowledge, all and singular the farms and lands of the said A. B., situate, &c., aforesaid, with all and singular the cattle, stock, and utensils, hereafter and for the time being belonging to, or being upon, the said farm and lands; he, the said A. B., providing from time to time all such sums of money as may be necessary to be expended or disbursed in relation thereto; AND also, that he, the said C. D., shall and steward to will on, &c., in every year, well and truly account account at to him, the said A. B., his executors, administra- times. tors, and assigns, for all sums of money which he shall have received and paid during the preceding quarter of a year, for or on account of the said farm and lands, and the stock and growing produce thereof, and pay over the same, or the balance thereof, after retaining such expenses and allowances, unto him or them; AND in consideration of salary. the covenant and agreement hereinbefore contained on the part of the said C. D., he, the said A. B.,

doth hereby covenant, promise, and agree, with and to the said C. D., his executors and administrators, that he, the said A. B., his executors or administrators, shall and will well and truly pay, or cause to be paid, unto the said C. D., his executors, administrators, or assigns, by equal quarterly payments, on the days or times hereinbefore mentioned, the said yearly sum or salary of £ ----, or after the rate of such yearly sum or salary, so long as he, the said C. D., shall continue to be the bailiff, steward, or agent, of or for him, the said A. B., under or in pursuance of these presents; and that in default thereof, he, the said C. D., shall or lawfully may retain the same out of such moneys as may from time to time come to or be in the hands of him the said C. D. PROVIDED ALWAYS, and it is hereby further agreed, by and between the said parties hereto, that if either of them be minded or desirous to dissolve the contract or agreement hereby entered into at any time hereafter, (or if the agreement be for a certain term of years, say, during the said term of —— years, hereinbefore limited for the continuance thereof,) and either of them shall give six calendar months' notice in writing, under his hand, unto the other of them, of such his mind or desire; that then, and upon such notice, the said parties do hereby covenant and agree, that from and after the expiration of the said six calendar months, this present contract, and these presents, shall cease and determine, and then, and in such case, the said accounts shall be settled and adjusted by and between the said parties, to the day in which such notice shall expire. In witness, &c.

Notice of dissolving contract.

(8.)

Agreement with Timber Merchants for the Sale of Timber Trees, and as to falling the same on the Farm and Lands on which they are growing.

Parties. AGREEMENT made and entered into this ---- day

of, &c., BETWEEN G. O., of, &c., Esquire, of the one part, and T. W., J. W., and G. W., all of, &c., trading under the firm of, &c., timber merchants, of the other part.

First, the said G. O., in consideration of the sum Consideraof £ — in hand, now paid to him, and of the further sum of £ —, to be paid to him, the said G. O., by them, the said T. W., J. W., and G. W., or one of them, at the time and in manner hereinafter mentioned, doth for himself, his heirs, executors, administrators, and assigns, agree to sell unto the said T. W., J. W., and G. W., their executors, administrators, and assigns, the several timber trees, and other trees hereinafter mentioned, growing upon a certain farm, belonging to the said G. O., situated, &c., (that is to say,) 303 oak trees, 101 elm trees, 70 ash trees, 20 sycamore trees, &c., being all scribe marked, and numbered, &c.; in consideration whereof, the said T. W., &c., doth Covenant by hereby for themselves, jointly and severally, and timber merchants to cut for their and each of their executors, administrators, down timand assigns, covenant, promise, and agree, to and with the said G. O., his heirs, executors, administrators, and assigns, in manner following, (that is to say,) that they, the said T. W., J. W., G. W., shall and will, at their own expense, cut down the said timber and other trees, and butt and top the elm, ash, and other winter timber, intended to be immediately fallen, on or before the 25th day of March next, and the whole of the oak on or before the 24th day of June next; and shall and will also And to butt cut down and butt and top the remainder of the said and lop the elm, ash, and other winter timber, on or before the 2nd day of February, 1838, without doing any wilful damage to the saplings, trees, or other wood, in the coppices, hedges, fences, and premises; and that the said timber and other trees shall be stocked, and the roots and sperms thereof gotten out of the ground, in a fair and workmanlike manner: and such of the said timber and other trees as

To be properly axe fallen.

carried to.

are growing on the banks of the pools and brooks, or other the banks and fences of the said premises, shall be axe fallen, or sawn off, in such a manner as the said G. O., his heirs, executors, administrators, or assigns, shall direct, so as to prevent the banks of the said pools and fences from being broken down, fallen in, or otherwise destroyed; and also, that the boughs and tops of each and every of the. said oak trees shall, immediately after the falling thereof, and at the expense of them, the said T. W., J. W., G. W., their heirs, executors, administrators, Place to be and assigns, be cut off, and carried to some convenient place on the said estate, to be appointed by the said G. O., there to be peeled, so that the cattle and sheep grazing on the said premises, where the said trees are fallen, may not be injured by eating the buds thereof; and that the whole of the elm, ash, winter timber, and other trees, cordwood, and other wood, arising, shall be cleared off the premises by the usual and proper roads, to the places hereinafter mentioned, for converting the same at

clearing off.

such times when the least possible damage can be done to the said land, before the 25th day of March The times of next ensuing; and that the whole of the oak, timber, and other trees, intended to be immediately hereafter fallen, and the cordwood and other wood arising therefrom, shall be cleared off the premises in like manner as above mentioned, on or before the 29th day of September next ensuing; and the remainder of the elm, ash, winter timber, and other wood, cordwood, and other wood, arising therefrom, shall in like manner be cleared off the premises for converting the same on or before the 25th day of March, 18, without being allowed the privilege of making charcoal of the boughs or wood arising from any or either of the said timber or other trees, on any part of the same premises, otherwise than as hereinafter appointed, and without being allowed twigs or any kind for tying up any of the wood, faggots, or otherwise, out of the corpices, hedges, or fences, belonging to the said G.O.; AND it is

hereby agreed and declared, that the whole of the As to coking said cordwood shall be coked or coaled in the places and coaling. hereafter mentioned; (that is to say;) such of the said cordwood or other wood as shall arise from the timber growing on the western side of a certain road, leading, &c., shall be coked in the spring Places where. coppice, and the remainder, or other parts thereof, arising on the eastern side thereof, in the waller shell coppice; and the turf necessary for that purpose, shall be had and gotten in such coppice only, and not elsewhere off the said farm and land, belonging to the said G.O.; and that the horses Beasts for and other beasts carrying away such charcoal, out charcoal of such coppices, respectively, shall be properly from the premuzzled, so as to prevent them from biting or in-muzzled. juring the shoots or other twigs, or underwood, growing therein, or from grazing upon any of the lands belonging to the said G. O. And it is hereby Saw-pits. also agreed, that it shall and may be lawful, to and for the said T. W., J. W., and G. W., to sink three several saw-pits upon the said premises, but in such places only as the said G. O. shall appoint, and not elsewhere, for converting any part of the said timber and other trees; and that the said timber, trees, And not to cordwood, or other wood, or any part thereof, shall any other not in anywise be converted upon any of the said ground exlands or premises, belonging to the said G. O., or said. coked thereon, other than and except as aforesaid; and that each of such saw-pits, so to be made Saw-pits to respectively as aforesaid, shall be properly fenced be fenced. or covered and shall, immediately after the expiration of the time hereinbefore allowed for carrying and converting of such timber, be properly filled up at the expence of the said T. W., J. W., and G. W., their heirs, executors, administrators, or assigns, to the entire satisfaction of the said G. O., his heirs or assigns; AND further, that they, the stakes to be said T. W., J. W., and G. W., their, &c., shall allowed for every tree allow the said G. O. five good stakes for every tree fallen, and to be fallen, in the hedges or fences of the said pre-to make up mises, and also a sufficient quantity of the tops of gaps.

tioned.

Covenant of the consideration money.

such trees to make up the gaps in such hedge rows or fences; and shall also make to the said G.O., his heirs or assigns, full compensation and satisfaction for all damages whatsoever sustained, or to be sustained, in falling such timber and other trees, except such as are absolutely necessary and rea-Double the sonable; AND further, that if any of the said timber amount of or other trees, cordwood, or other wood, shall remain sordwood or upon the said premises, or any part thereof, after other wood the times hereinbefore mentioned for removing the on the pre-same, they, the said T. W., J. W., and G. W., shall the term be- and will allow the said G. O., his heirs or assigns, fore men- damage, to double the amount he or they may in anywise sustain, expend, or be put unto, in consequence of such timber, or other trees, cordwood, and other wood, remaining upon the said premises, after the times hereinbefore mentioned for taking off and clearing the same therefrom; AND lastly, for payment the said T. W., J. W., and G. W., severally and respectively, and for their several and respective heirs, executors, administrators, and assigns, do and each of them doth covenant, promise, and agree, to and with the said G. O., his executors, administrators, and assigns, that they, the said T. W., J. W., and G. W., or some or one of them, their, or some or one of their heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said G. O., his executors, administrators, or assigns, the said purchase money, or sum of £ ---, at the times and in the proportions hereinafter mentioned, (that is to say,) (state the times for payment).(j) In witness, &c.

⁽j) A bond or other security is usually given for the purchase money, as well as for the performance of the stipulations in the agreement. (See Bonds.)

(9.)

Articles of Agreement containing a Licence from a Mortgagee to a Mortgagor to grant building, repairing, or improving Leases.(k)

ACREMENT made this —— day of, &c., BETWEEN A. B., of, &c., for himself, his heirs, executors, and administrators, of the one part, and C. D., of, &c., for himself, his heirs, executors, and administrators, of the other part.

WHEREAS, (recite the mortgage, and recite that Recital. it would greatly improve the said mortgaged premises by letting certain parts thereof on building and other leases; several parts thereof being peculiarly convenient and applicable for such improvements, and also that it is expedient to let certain other parts thereof, as the case may be). Now these presents witness, and the said A. B. doth witness. hereby covenant, declare, and agree, to and with the said C. D., THAT if, at any time, whilst the principle sum of £ ----, or any part thereof, shall remain due, and owing upon the said recited securities, before the said A. B., his executors, administrators, or assigns, shall have brought ejectments to recover the possession, or filed a bill to foreclose the equity of redemption of the said mortgage and premises, (or if the mortgage be in trust for sale, say, before the said A. B., his, &c., shall have given due notice of his or their intention of proceeding to a sale of the said hereditaments,) the said C. D. shall be desirous of granting any such

⁽k) The legal estate of a mortgagor after default is no more than that of a tenant by sufferance, and he may be treated as such, or as a tresposser, at the election of a mortgagee.—Doe v. Maisey, 8 B. & C. 767. And the mortgagor or his tenant coming in after the mortgage, may be ejected without any demand of possession having been made, either by the original mortgagee, or by his assignee.—Thunder v. Belcher, 3 East, 449. Hence the utility of the above precedent, as the mortgagee can grant no lease of the mortgaged premises without the privity of the mortgagee.—Keech v. Hall, 1 Dong. 21. But if at the time of the mortgage being made there is a yearly tenant in possession of the mortgaged premises, or any part thereof, such tenant will be entitled to six months' notice to quit from the mortgages.—Ib. 12.

Power to demise.

leases, then it shall and may be lawful to and for him the said C. D., by indenture or indentures, under his hand and seal, to demise, lease, or grant, all or any part or parts of the said hereditaments and premises, comprised in the said hereinbefore in part recited indentures of, &c., unto any person or persons who shall be willing to build upon, or to improve the same, on repairing leases, for any term or number of years not exceeding - years; and also to demise, lease, and grant, all or any part of the said lands, hereditaments, and premises, as have usually been letten at rack rents, or rents unto any person or persons who shall be willing to take the same, for any term or number of years not exceeding —— years, so as the respective lease or leases be made to take effect in possession, and not in reversion, or by way of future interest, and so as such respective grants or leases for ---- years be made in order for the premises to be built upon or improved; AND also, that in all and every the contained in said leases there be reserved and made payable half-yearly, or oftener, during the continuance of the said term thereby to be granted, the best and most improved yearly rent and rents that can be

tions to be the leases.

At rack

rents.

Covenants leases.

buildings, agreed to be erected and built, upon the ground thereby to be leased respectively, with covenants to be contained in all the leases that the to be contenants and lessees do leave and surrender the premises at the end of the term or terms in such leases respectively to be granted; and so as in every of the said leases there be contained conditions of reentry, &c., and that he, the said A. B., shall and will, from time to time, upon the reasonable request, and at the cost and charges in the law, of the said A. B. to ra- C. D., his heirs and assigns, allow, ratify, and con-

had or reasonably gotten for the same, without taken any sum or sums of money or other things by way of premium or fine; and so as the said several lessees, in the several building or repairing leases, do enter into proper and usual covenants to build and keep in repair the messuage, erection, and firm, all and every the lease and leases to be granted tily and confirmation conformity to the restrictions hereinafter mentioned, provided such confirmation does not prejudice his right to enter into, and recover, and hold, the possession of the said mortgaged premises, by virtue of the said recited indentures of lease and release or mortgage, subject only to such leases as have been granted by the said C. D., agreeable to the true intent and meaning of these presents. In witness, &c. (1)

(10.)

Agreement for building a House and Premises.

ARTICLES of agreement made this — day of, Parties. &c., BETWEEN A. B., of, &c., for himself, his heirs, executors, and administrators, of the one part, and C. D., of, &c., for himself, his heirs, executors, and administrators, of the other part: WHEREBY the Stipulation said A. B. agrees with the said C. D., that he, the said A. B., in consideration of the sum of £——, to be paid to him at the time hereinafter mentioned, shall and will, on or before the —— day of, &c., build, erect, and completely finish, upon a certain piece of land, of him, the said C. D., situate, &c., the messuage and buildings set forth in the annexed proposal or estimate, and according to the plan and elevation signed by the said A. B., and shall and will find and provide good, proper, and sufficient

⁽I) This agreement may be shortened, thus, after the recital of the mortgage:—"That all leases which, from time to time, (during the continuance of the said sum of £——, on the said recited security,) shall be granted by the said (the mortgagor), or his assigns, of all or any of the said messuages, &c., therein comprised, either on building, repairing, or improving leases, and without any premium or fine to be taken for granting the same leases respectively, shall be binding on the said (mortgagee), his heirs, executors, administrators, and assigns, and all persons claiming, or to claim, by, from, or in trust for, him or them; and that the said C. D., his heirs, executors, administrators, or assigns, on the request, and at the costs and charges, of the said A. B., his heirs, executors, administrators, and assigns, or if such lessee or lessees, his, her, or their, executors, administrators, and assigns, shall and will make, do, and execute, or concur in all such acts, deeds, and assurances, as shall be necessary to confirm or give effect to the same lease or leases, as to and against the said (mortgagee), his heirs, executors, administrators, and assigns.

In case of materials (m) for such purpose; AND it is hereby purchase materials, and cause the work to be done.

neglect by further agreed, between the said parties, that if the employer to said A. B. shall in any manner neglect or be guilty of any delay whatsoever, in the building, finishing, and completing the said messuage and buildings, so contracted by the said A. B., to be done as aforesaid, and the said C. D. shall give or leave notice in writing, of such neglect or delay, at the place of abode of him, the said A. B.; then, and in such case, it shall and may be lawful for the said C. D., within the space of —— days after such notice given or left as aforesaid, to purchase proper and sufficient materials, and also to employ a sufficient number of workmen to finish and complete the said messuage and buildings; and that the said C. D. shall and may deduct and retain the costs of such materials, and all such sum and sums of money as he shall pay to such workmen, for the completion of such messuage and buildings, out of the money that shall be so due to him, the said A. B., in pursuance and by virtue of the said Builder to agreement; AND that the said A. B. shall not, nor do no act to will in any manner do, or cause, or procure to be ployer pro-done, any act, matter, or thing, whatsoever, to prevent or hinder the said person or persons, so to be employed by the said C. D., his executors, administrators, or assigns, from completing and finishing the said messuage and buildings, in pursuance of the said covenant, or in using the materials which shall be provided for the doing of the same, or any ways molest, or cause to be molested, the said C. D., his executors, administrators, or assigns, or any person or persons employed by him or them in the doing thereof; AND the said C. D. doth hereby promise and agree, with the said A. B., that he, the said C. D., will pay, or cause to be paid, unto the said A. B., the sum of £ —, of, &c., on,

with the work.

⁽m) If the materials are to be found by the employer, the provision may be thus:—" And that such house and buildings shall be erected and built with such materials as shall be found and provided by the said A. B. for that purpose."

&c., next after the said messuage and buildings shall be completely built, done, and finished; AND it is supulation hereby agreed, between the said parties, that in in case of extra work. case the said C. D. shall direct any more work to be done, in or about the said buildings and premises, than what is contained in the schedule hereunto annexed, that then, and in such case, the said C. D. shall pay, or cause to be paid, unto the said A. B., so much money(n) as such extra work shall be worth upon a reasonable valuation; and in case it shall be thought proper, by the said C. D., to diminish or omit any part of the work in the said schedule, that then the said A. B. shall deduct and allow, out of the money agreed to be paid by him, the said C. D., as aforesaid, so much money as the work, so to be diminished or omitted, shall amount unto, upon a reasonable valuation; AND it is hereby Arbitration also agreed, between the said parties, that if any clause. dispute or difference shall happen between them, concerning the said messuage and buildings, so agreed to be erected as aforesaid, or concerning the money agreed to be paid for the same, according to the admeasurement and value thereof, (in case the same shall be admeasured and valued,) or touching or concerning any alteration, addition, or determination, in respect of the same, or touching any additional payment to be made by the said C. D., to the said A. B., or any allowance to be made by the said C. D. in respect thereof, or concerning any other matter or thing whatsoever, relating to the work hereby contracted to be done, that then, and in such case, such dispute or difference shall be left to the determination and award of two indifferent persons, one to be named and appointed in writing by the said A. B., and the other by the said C. D.; AND Umpire. in case of their disagreement in the arbitration, then to such third person, as the said two persons.

⁽a) Any deviations from the original plan by the owner subjects him to additional charges occasioned thereby; and in the absence of any express stipulation how the same is to be paid for; it can only be recovered on a quantum meruit.—Robson v. Godfrey, Holt, 236. 1 Stark, 275.

so to be chosen as aforesaid, shall nominate and appoint, whose decision and award shall be final and conclusive on the said parties; AND the said A. B. and C. D. further agree, that they will severally stand to, abide, perform, and keep, the award and determination of the said arbitrators, (or their umpire in case of their disagreement,) as to the matters that may be in dispute, touching the several matters and things referred to them as aforesaid, so as the same be made in writing under the hands and seals of the said arbitrators, or their umpire, within three calendar months next after such matters in dispute being referred; AND for the true performance of this agreement, the said A. B. binds himself to the said C. D., in the penal sum of £ —— (or say, in the sum of £ ----, to be recovered as liquidated or ascertained damages).(o) In witness, &c.

(11.)

Agreement with Conditions for a building Lease.

Conditions for granting a lease for twenty-one years to C. D., of, &c., of a piece or parcel of land, situate, &c., containing, &c., and delineated in the ground plot or plan (annexed to or included in the margin) of these presents, the property of A. B., of, &c., Esquire.

To grant

The said A. B. to grant and execute a lease of

(o) A clause in agreements of this description is usually inserted, stipulating for the payment of a sum of money, either by way of penalty, or for liquidated or ascertained damages, in case of violating any of the articles of the contract by either party. When it is expressed as liquidated damages, a reference to a jury will be prevented, and is the same as if the damages were fixed; and this has been so considered by the courts.—See Astley v. Welden, 2 B. & P. 346. Lowe v. Peers, 4 Burr. 2225. Barton v. Glover, Holt, 43. Fletcher v. Dytche, 2 T. R. 32. Reilly v. Jones, 1 Bing. 302. 8 Moor. 244. But it appears the agreement must specify the particular stipulation or stipulations to which the liquidated damages are to be confined.—Kemble v. Farren. 6 Bing. 141. 3 M. & P. 425. If inserted by way of penalty or "penal sum," the court is precluded from considering it as, or in the nature of, liquidated damages, but as a mere penalty, leaving the damages to be ascertained.—See Astley v. Weldon, ubi supra; Smith v. Dickenson, 3 B. & P. 630. Davis v. Penton, 6 B. & C. 216. 9 D. & R. 369. Kemble v. Farren, ubi supra. It seems that a court of equity will compel a specific performance where the damages fixed turn out to be inadequate.—Hobson v. Trevor, 2 P. Wms. 191.

the said piece of the land as soon as the dwelling-lesso on house and premises, hereinafter stipulated to be buildings. erected by the said C. D., shall be covered in; and that the lease shall be made to hold from the. day of, &c., for the term of, &c., next ensuing, at an annual rent of, &c., (being at the rate of, &c., per foot, of the said piece of land,) subject to all rates and taxes whatsoever.

The said C. D. to deduct out of the first three Deduction years' rent one third part of the said annual rent first three for his own use and benefit.

The said lease to contain all usual covenants, and covenants to be conparticularly covenants on the part of the said C. D., tained in that no bricks, or tiles, or other wares, shall be lease. made upon the said premises; and that no inn, tavern, or public-house, trade, or manufactory, shall be carried on there, but that the same shall be used only as a private dwelling-house; and that no gravel or loam shall be dug or sold, or any dilapidations or waste committed or suffered on any part of the said premises.

The said C. D. to insure, and keep insured, the Lessee to inpremises from fire, in the sum of £ ----, in the sure.

— Insurance Office, in London.

The said C. D. to proceed forthwith to erect, and Lessee to to cover in, finish, and complete, on or before the proceed to cover in, finish, and complete, on or before the forthwith to —— day of, &c., at his own costs and charges, in a build. good and workmanlike manner, a substantial brickbuilt messuage or dwelling-house, with suitable outhouses, buildings, and appurtenances, agreeable to a plan and elevation of the same, to be first approved by the said A. B.

The said C. D. to erect such dwelling-house at Mode of not less than twenty feet from the public road ad-erection. joining the premises leading from E. to F.; and that no part of the back buildings at a distance of more than fifteen feet from the said dwelling-house, shall be erected above the height of —— feet from the surface of the ground.

The said C. D. to lay out and expend in the Amount to building of the dwelling-house, exclusive of all in building.

other erections, the sum of £ —; and at his own expense erect a paling of iron of five feet in height from the surface of the ground, on the east and south sides of the said piece of land, so agreed to be taken by him for building as aforesaid.

Memorandum of agreement,

It is hereby agreed, BETWEEN the said A. B., for himself, his heirs, executors, and administrators, and the said C. D., for himself, his heirs, executors, and administrators, that he, the said A. B., shall and will execute an indenture of lease to the said C. D., of the said piece of land, and buildings when erected, at the time aforesaid, at the rent and upon the terms and conditions before mentioned; and the said C. D. on his part, agrees to build the said dwelling-house upon the said piece or parcel of land, on or before the time before mentioned, and pay the rent to the said A. B., his heirs or assigns, (deducting for the said first three years one third part thereof as aforesaid,) and will execute a counterpart of the said lease, both of which shall be prepared at his expense, and will, in all respects, conform to the foregoing stipulations and conditions on his part to be performed.

(12.)

Building Agreement, and to grant a Lease when Houses are erected by Way of Underlease.

Parties.

An agreement made the —— day of, &c., and made BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

Recital.

Whereas the said A. B. being entitled (among others) as lessee, under and by virtue of a lease dated, &c., and made between, &c., for a term of ninety-nine years, to the piece or parcel of land hereinafter agreed to be let to the said C. D., hath made proposals to the said C. D. for letting the same to him on a building lease, for a term of twenty-one years, on payment down of the sum of £——,

and at the rent hereinafter mentioned; and the said C. D. hath agreed to accept thereof, and to pay such sum, and also to build two houses thereupon, within two years from the date hereof, upon having a lease granted of the same at the end of such period, upon completion of the houses, at the rent and upon the conditions hereinafter mentioned.(p) Now these presents witness, that, for Witness. and in consideration of the sum of, &c., of lawful Consideramoney of Great Britain, to the said A. B., in hand, well and truly paid by the said C. D., at or immediately before the sealing and delivery of these presents, the receipt whereof he, the said A. B., doth hereby acknowledge, and of and from the same and every part thereof, doth hereby acquit, release, and for ever discharge, the said C. D., his executors, administrators, and assigns, by these presents; he, the said A. B., doth hereby agree to let unto the Agreement to let. said C. D., all that, &c., (describe the land particu-larly,) be the same more or less, as the same is or Property. are more particularly described or delineated in the ground plot or plan drawn in the margin of these presents, and all ways, paths, passages, lights, ease- General words. ments, waters, water-courses, profits, commodities, and appurtenances whatsoever, to the said premises belonging, or in anywise appertaining; TO HOLD Term. the said piece or parcel of ground, with the appurtenances, unto the said C. D., his executors, administrators, and assigns, from, &c., now last past, for, and during, and unto, the full end and term of —— years, at and under the yearly rent of, &c., clear of the land tax, sewers' rate, and all other rates, taxes, charges, and assessments, whatsoever; AND the said C. D., for himself, his executors, Agreement to take the administrators, and assigns, doth hereby promise premises on and agree, to and with the said A. B., his executors, lease.

⁽p) If the land has been put up to auction, say, "Whereas the piece or purcel of ground, hereinaster agreed to be leased, was (subject to the rents, and covenants, and conditions, therein and hereinaster contained) put up to sale by public auction, to the highest bidder, at &c., and the said C. D. was then and there declared the highest bidder for the same, subject as aforesaid."

rent without deduction.

Lessee to build within three years.

Sum of building.

Lessor to grant and execute a

administrators, and assigns, that he, the said C. D., his executors, administrators, and assigns, shall and will take the said piece or parcel of ground for the term and at the yearly rent aforesaid; and shall and will well and truly pay, or cause to be paid, unto the said A. B., his executors, administrators, and assigns, the yearly rent or sum of, &c., as and when the same shall become due, and payable as aforesaid, clear of the land tax, and all other rates, taxes, charges, and assessments, whatsoever; AND also, that the said C. D., his executors, administrators, or assigns, shall and will, within the time or space of three years, to be computed from the day of the date of these presents, erect, build, set up, and tile or slate, and cover, and in all respects completely finish, (fit for habitation,) in a good and workmanlike manner, upon the said piece or parcel of ground, two substantial brick messuages or tenements, with such party walls, conveniences, and necessaries to the same, as shall be requisite and fitting, according to the manner of building new houses now used in that neighbourhood, the same to be built with good materials, under the inspection, and to the satisfaction, of the said A. B., his executors, administrators, and assigns, or his surveyor; in money to be erecting and building of which messuages or tenements, shall be laid out the full sum of £ ---- at the least; AND the said A. B., for himself, his executors, administrators, and assigns, doth hereby lease when promise and agree, to and with the said C. D., his thebuildings executors, administrators, and assigns, in manner following, (that is to say,) that when and so soon as the said two or more messuages or tenements and premises shall be erected and built, as aforesaid, he, the said A. B., his executors, administrators, and assigns, shall and will, well and effectually, by indenture, demise and lease the said piece or parcel of ground, and messuages, or tenements and premises, so to be erected and built as aforesaid, unto the said C. D., his executors, administrators, and then to come assigns; To HOLD to the said C. D., his executors, administrators, and assigns, for and during all the residue and remainder which shall be then to come and unexpired, of and in the said term of ---years, subject to the payment of the said yearly rent of, &c., clear of all taxes as aforesaid; and in which And to consaid lease shall be contained all and every the like same clauses covenants, clauses, provisoes, conditions, restrictions, as in the original and agreements, as are contained in the lease by lease wherevirtue whereof the said A. B. holds the said pre-by he holds. mises; and also a covenant for the said C. D., his Lessee to inexecutors, administrators, and assigns, to insure, or sure precause to be insured, the said messuages, or tenements and premises, in a competent and sufficient sum of money in the fire office called and known by the name of, &c., and a covenant for the said A. B., his executors, administrators, or assigns, to indemnify the said C. D., his executors, administrators, or assigns, from the payment of any other or further rent and taxes in respect of the said premises, and all costs and damages by reason of the non-payment thereof, and all other demands whatsoever; AND the said C. D., for himself, his exe- To accept cutors, administrators, and assigns, doth hereby lease. promise and agree, to and with the said A. B., his executors, administrators, and assigns, that he, the said C. D., his executors, administrators, and assigns, shall and will take and accept of such lease as aforesaid, and duly execute a counterpart thereof unto the said A. B., his executors, administrators, and assigns; AND lastly, it is hereby further de-To execute a clared and agreed, by and between the said parties counterpart. to these presents, that such lease and counterpart shall be prepared by the solicitor of the said A. B., and that the expense thereof shall be borne and Expense of paid equally by them the said A. B. and C. D., lease and counterpart. their executors, administrators, or assigns. witness. &c.

(13.)

Another Form of a building Agreement to a Sub-lessee, with a Covenant by Sub-lessor to advance a Sum of Money when the Building is partly erected.

Parties.

MEMORANDUM of agreement made this —— day of, &c., BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

Consideration.

The said A. B., in consideration of the rent, and of the covenants and agreements hereinafter agreed to be done and performed by the said C. D., his executors, administrators, and assigns, doth hereby agree to let unto the said C. D., his executors, administrators, and assigns, when and as soon as he shall have erected, built, and finished, the messuage hereinafter covenanted to be erected; and that he, the said A. B., will then grant and demise unto the said C. D., his executors, administrators, and assigns, ALL that, &c., and all ways, paths, passages, lights, easements, waters, water-courses, profits, commodities, and appurtenances, whatsoever, to the said premises belonging, or in anywise appertaining; TO HOLD the same, &c., hereinbefore agreed to be demised, with their appurtenances, unto the said C. D., his executors, administrators, and assigns, from, &c., now last past, for, and during, and unto, the full end and term of twentyone years, at and under the yearly rent or sum of, &c., payable quarterly, clear of the land tax, sewers' rate, and all other rates, taxes, and assessments. whatsoever, whether parliamentary or parochial; AND it is hereby covenanted and agreed, by and between all the said parties to these presents, that in such lease shall be contained all and every the like covenants, clauses, provisoes, conditions, restrictions, and agreements, as are contained in the lease by virtue whereof the said A. B. holds the said pre-To insure mises; and also a covenant for the said C. D., his against fire. executors, administrators, and assigns, to insure,

Premises.

Term.

Covenants to be contained in lease.

and keep insured, the said hereditaments, in the sum of £ ---, in the fire office, in London, called, &c.; and a covenant for the said C. D., his executors, administrators, and assigns, to indemnify the said A. B., his executors, administrators, and assigns, from the payment of any other or further rent, or rents and taxes, than those which are reserved by the lease whereof the said A. B. holds the same, and all costs and damages by reason of the non-payment thereof, and all other demands whatsoever; AND the said A. B., doth hereby also The intendcovenant, promise, and agree, to and with the said ed lessee to C. D., his executors, administrators, and assigns, &c. that he, the said C. D., his executors, administrators, and assigns, from henceforth, until the said intended lease shall be granted, paying the aforesaid yearly rents, and performing and keeping all and singular the covenants on his or their parts and behalf hereinafter expressed to be kept, shall and will from henceforth, and at all times, until the said A. B. shall duly execute, and deliver to him, the intended lease, peaceably and quietly have, hold, occupy, To occupy, and enjoy. and enjoy, the hereditaments and premises, with the appurtenances, without any lawful let, suit, molestation, or interruption, of him, the said A. B., his executors, administrators, or assigns, or any other person or persons whomsoever, claiming or to claim by, from, or under, him or them, or by or through his, their, or any of their acts, means, defaults, or procurement; AND the said C.D. doth Covenant to hereby for himself, his executors, administrators, take the said and assigns, covenant, promise, and agree, to and upon the with the said A. B., his executors, administrators, said. and assigns, in manner following, (that is to say,) that the said C. D., his executors, administrators, and assigns, shall and will take the said, &c., from the — day of, &c., now last past, for the term, and at the yearly rent, aforesaid; and also shall and will well and truly pay, or cause to be paid, unto the said A. B., his executors, administrators, and assigns the said yearly rent of, &c., by even and equal

And to erect thebuildings within the space of three years.

quarterly payments, as and when the same shall become due, and payable as aforesaid, clear of the land tax, and all other rates, taxes, charges, and assessments, whatsoever, whether parliamentary or parochial, the first payment thereof to be made on the —— day of, &c., next ensuing; AND also shall and will, within the time or space of three years, to be computed from the —— day of, &c., last past, erect, build, set up, and tile or slate, and cover in, and in all respects completely finish, fit for habitation, in a good and workmanlike manner, upon the said piece or parcel of ground, hereby agreed to be demised, one substantial brick messuage or tenement, with such party walls, (q) conveniences, and necessaries, to the same, as shall be requisite and fitting, according to the manner of building new houses, now used either in that neighbourhood, or according to the act or acts of parliament in such case provided; the same to be built with good materials, and under the inspection, and to the satisfaction, of the said A. B., his executors, administrators, or assigns, or his surveyors; in the erecting and building of which said messuage or tenement and premises, shall and will lay out the full sum of, &c., at the least; and shall and will forthwith insure, and keep insured, from fire, the said messuage and premises, when so erected, in the office called the - Fire Office, in London, in the sum of, &c.; To take and and shall and will take and accept of such lease as aforesaid, and duly execute a counterpart thereof, unto the said A. B., his executors, administrators, and assigns; AND further, it is hereby declared and agreed, by and between the said parties to these presents, that such lease and counterpart shall be made and prepared by the said C. D., and that the

accept lease.

To insure.

⁽q) If the buildings are to be within the cities of London or Westminster, or the liberties thereof, or other parishes, precincts, or places, within the weekly bills of mortality, the parishes of Saint Mary-le-bone, Paddington, Saint Pancras, and Saint Luke, at Chelsea, in the county of Middlesex, in such case the directions of the act of the 14 G. III., c. 78, must be conformed to the directions of which are extraordly minute and numerous formed to, the directions of which are extremely minute and numerous, and must, therefore, be referred to for further information on the subject. (See note to p. 108, as to party walls.)

expense thereof, and of this agreement, shall be borne and paid by the said C. D., his executors, administrators, and assigns; AND lastly, the said Lessor to ad-A. B., for himself, his executors and administrators, vancemoney on bond. doth hereby further covenant, promise, and agree, with and to the said C. D., his executors, administrators, and assigns, that he, the said A. B., his executors or administrators, shall and will, when and so soon as the said C. D. shall have proceeded with the said building to the amount or value of, &c., advance and lend to him, the said C. D., on bond, the sum of, &c., of lawful money, on interest, at £4 per cent. per annum, payable at the expiration of two years from the time when such sum of, &c., shall be so advanced; AND that it shall and may be To peacelawful, to and for the said C. D., immediately upon ably enjoy. execution of this agreement, peaceably and quietly to enter into and upon the said piece of ground hereby covenanted to be leased to them as aforesaid; or if it shall be found necessary to commence If necessary any action of ejectment, whereby to recover the to eject. legal possession thereof, then the said A. B., his executors or administrators, shall and will pay for, or cause to be repaid, to the said C. D., all the costs of such ejectment, and all damages and expenses he or they shall or may be liable to by reason or on account of their being kept out of possession; and in the mean time, and until full and complete possession shall be lawfully had, shall surcease from demanding any of the ground rent hereby agreed to be paid. In witness, &c.

(14.)

An Agreement for building a Row of Houses.

AGREEMENT made this — day of, &c., BETWEEN Parties.

A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

- (r) The said C. D. doth hereby for himself, his stipulation
- (r) A recital may be introduced thus:—" Whereas the said A. B. is possessed of a piece of ground situated, &c., and containing, &c., upon-which

between parties.

heirs, executors, and administrators, covenant, promise, and agree, with and to the said A. B., his executors, administrators, and assigns, that he, the said C. D., his executors or administrators, shall and will, at his and their own proper cost and charges, erect five messuages or dwelling-houses, in one continued line or row, upon a piece or parcel of ground of the said A. B.'s, situate, &c., according to the elevation delineated in the ground plot or plan thereof, drawn in the margin of these presents, and with such proportions of brick, and such scantlings of timber, heights, and numbers of stories, as hereafter is mentioned, (that is to say,) Height, &c., the cellars and all other stories of the said mesaccording to act of parlia- suages to be of such heights as is set forth for the second rate of buildings in the act of parliament passed in the fourteenth year of the reign of his late majesty George the Third; (s) the fore fronts

Messuages to be built.

Elevation and plan.

ment.

Fronts.

he is desirous of building a row of houses, and hath contracted with the said C. D. for building and completing the same in the manner, and upon the terms and conditions hereinafter mentioned. Now these presents wit-

ness that the said C. D. doth," &c.
(s) By the building act 14 Geo. III., c. 78, being an act for the further and better regulation of buildings and party walls, and for the more effectually preventing mischiefs by fire, within the cities of London and Westminster, and the liberties thereof, and other the parishes, precincts, and places, within the weekly bills of mortality. It is (by sec. 41) enacted, that persons at whose expense any party wall or party arch shall be built, shall be reimbursed by the owner entitled to the improved rent of the adjoining building or ground, who shall at any time make use of it, or part of the expense of building the same, in the proportion of the actual expense, where the class of buildings is the same, or of one moiety of the estimated expense, (according to the quantity of wall made use of,) where the class of the building last erected is inferior to the former. The rate of expense is to be estimated at £7 15s. per rod of new brick work. Ten days after a party wall is finished, an account is to be left with the owner of the adjoining building of what he is liable to pay; and if the plaintiff before action gives three months' notice, and recovers, he is to have double damages. The owner of the improved rent, not of the ground rent, is liable to pay the expense of a party wall.—Peck v. Wood, 5 T. R. 130. The lessor, at a rack rent, is liable, not the tenant, although he has improved the house demised.—Beardman v. Fox, 8 T. R. 214. The assignment of a lesson at a fixed rent is not liable although he has improved the nee of a lessee, at a fixed rent, is not liable, although he has improved the annual value.—Lamb v. Hemans, 2 B. & A. 467. But the lessee, at a rack rent, underletting at an advanced rent, is liable.—Languter v. Birk-A tenant, who re-builds without lease, or an agreehead, 1 B. & P. 303. ment for one, is not liable by using the party wall of the adjoining house, although he obtains a beneficial lease in consequence thereof.—Taylor v. Read, 6 Taunt. 249. A sub-tenant building a party wall on his part of the ground, and making use of the party wall, and the agreement containing no stipulation or provision in case should be done, the original leases was not entitled to compensation, although the sub-tenant let at rent exceeding that of his building agreement, inasmuch as the lessee was the owner

and back fronts to be two bricks and a half thick Thickness to the top of the cellar floor, the first and second of bricks. stories to be two bricks in the thickness, the third story above ground to be one brick and a half in thickness, and the garrets one brick in thickness; the partition walls between house and house to be

of the improved rent within the statute. - Williams v. Pokelington, 2 B.& A. 876. Semble, that the clause does not apply where the land adjacent to a party wall is under an agreement with the builder.—Id. The occupier of a house, adjoining one which has been pulled down and re-built by a building company, is not entitled to this remedy by the reason of the re-moval of a party wall, after a notice given under the building act, although the company may not have exactly complied with the provisions of the buildgact in respect of such party wall. - Rex v. Hungerford Market Company, 2 N. & M. 340. An executor or administrator is liable, although he has no other assets than the improved rent.—Thacker v. Wilson, 4 N. & M. 659. 3 Adol. & Ellis, 142. 1 Harg. and Woll. 131. The expenses of pulling down and re-building a party wall are a charge upon the land in the hands of the owner of the improved rent.—Id. The plea of an administrator, sued under this statute, that he had administered all the estate except a sum not sufficient to satisfy a judgment obtained against him, was held no answer to the action.—Id. The bona fide intention to pursue the directions of the act, although a trespass be committed not justifiable, will entitle the defendant to notice.—Wells v. Ody, 2 C. M. & R. 128. 7 C. & P. 22. 1 Gale, 137. And the action must be commenced within three months after the injury done, and after twenty-one days' notice given.— Pratt v. Hillman, 6 D. & R. 360. 4 B. & C. 269. And on a plea of not guilty, he may object to the absence of such notice.—Id. It appears that notice to the district surveyor applies only to cases where a party intends to take down any building, which notice the surveyor may waive. Id. This act does not protect a party from liability for collateral lamage, resulting from the building so erected, for the occupier of an adjoining house may maintain an action when his windows are darkened. Id. By sec. 100 of this act, if the plaintiff be non-suited in the action, the defendant will have judgment for treble costs. Semble, that in such case it is not necessary for the defendant to enter a suggestion on the roll to entitle himself to treble costs.—Wells v. Ody, 2 C. M. & R. 184.

The accounts prescribed by the 41st sec. must be delivered, and a formal Accounts,

demand made, whether the house be occupied by owner or tenant before notice, and action brought.—Philip v. Donati, 2 Taunt. 62. Although the statement demand. contains the prices received for the brick work, exceeding the prices fixed by the statute, yet if it contained the quantity of work done, and materials allowed for it, was held sufficient; and a demand for payment referring to such account, although greater than could be recovered, was a good demand.—Reading v. Barnard, M. & M. 71. An encroachment will not prevent the plaintiff from recovering, where the jury finds there was no

intention of encroachment: an objection should be taken while the work is in progress.—Id. The three months notice required applies only where the person liable to pay cannot agree with the owner of the adjoining house.—Peck v. Wood, 5 T. R. 130.

Party walls are not common property. If one party pulls down any ad-Right of predition made by the other, he is liable to an action for so much as stood on perty in parthe part of the wall erected on plaintiff's land; the property of a wall, tition walls, although erected at a joint expense, follows the property of the land although erected at a joint expense, follows the property of the land whereon it stands.—Matts v. Hawkins, 5 Taunt. 20. The penalty given by sec. 67 is recoverable against the master builder, and not against the proprietor of the premises.—Meynut v. Southgate, 3 Esp. 223. Under sec. 100, limiting the action to three months, where nothing has been done by the party entitled to bring his action within that time, he must bring his ejectment.-Trotter r. Simpson, 5 C. & P. 51.

two bricks in thickness at the least to the top of the cellar stories, and from thence to the garret floor to be one brick and a half in thickness at the least, and above the garret floor one brick in thickness; the brick work in the fore front to be wrought with stock bricks not rubbed, the straight arches in the front to be a brick and a half, and to rub the bricks round the jambs of the window in the brick work of the fore fronts, and to work a fasia at every story of each house in the front, with —— at the foot of it: that the said bricks shall be a good and sufficient well-burnt brick, and the mortar well wrought and tempered, and made of good lime and sand, or such other stuff as the said A. B. or his surveyor shall Balcony of appoint; that there shall be a balcony of wood or wood or iron to the front iron to the front of every house, which shall not project more nor less than three feet and a half beyond the upright of the said houses, with cantiliver cornice all along the said front to M.-street, according to a model thereof, to be signed by the said A. B., or his surveyor; there shall also be, &c.; No timber to AND that no timber shall be laid within twelve inches in twelve in- of the fire sides of the chimney jambs; and that all ches of chim-joists on the back of any chimney shall be with timber at six inches distance from the back: and that no summers or girders shall lie over the heads Ends of the of any doors or windows; and that all the ends of laid in loom. timber being in the wall shall be laid in loom; that all mantle trees shall be oak timber, and not less than seven and nine inches; that the tassels shall be of oak three inches thick, and to reach within four To make a inches of the back of the chimney, &c.; AND shall and will make a common sewer down and along the middle of the said street, of —— feet circumference. And drains. with good ---- bricks; and also shall and will make drains from the said houses into the said sewers. and that no house of office shall have issue into the And to level same; and also shall level and pave the said street so far as to the middle of the same, and shall pave along the said ground four feet in depth from the upright of the said walls of the said building with

Well-burnt brick to be used.

of every house.

be laid with-

common sawer.

and pave.

Swindon stone, descending one inch at least from the wall; and set up oaken posts of seven inches square, To set up and three feet and a half above the ground, twelve feet each from the other, all along before the said ground in the street, at five feet distance from the upright of the said wall, and make kennels all along the said street, next the said post; and that all and Glazing and every of the said houses shall be well and properly plastering. glazed, slated, and plastered, and in all things completely finished as to brick, carpenter's, plasterer's, smith's, glazier's, plumber's, painter's, and other work whatever, and made fit for habitation, on or before the —— day, of, &c., next ensuing the date of these presents. (Add the usual clause of arbitration, and also the penal clause, if required.) (See agreement for building, pp. 97, 98.) witness, &c.

(15.)

An Agreement for a Partition of leasehold Premises.

ARTICLES of agreement made the, &c., BETWEEN Parties. A. B., of, &c., of the one part, and C. D., of, &c., of the other part (as follows).

WHEREAS the said A. B. and C. D. are possessed Recital of of, or entitled as joint tenants, (t) (or "tenants in being poscommon,") to certain leasehold messuages or tenements and premises, situated, &c., for the term of - years, commencing, &c., under and by virtue of, &c. (state the deed or will). And whereas, the And agreesaid A. B. and C. D. have agreed to make such ment for partition. partition of the said estate and premises as hereinafter is particularly expressed; now these PRE-Witness sents witness, that in pursuance of the said part.

(4) In equity, joint tenancies are discountenanced.—Hawes v. Hawes, The courts 3 Atk. 524. A lease by one of joint tenants will operate as a severance. discounte—Clerk v. Clerk, 2 Vern. 323. Also a mortgage.—York v. Stone, 1 Salk. nance joint 156. Or covenant to sell.—Brown v. Randle, 3 Ves. 257; and see Ireland tenancies. v. Rittle, 1 Atk. 541. Whatley v. Dawson, 2 Sch. and Lef. And according to the cases of Fisher v. Wigg, 1 P. Wms. 21. Salk. 392. Partricke v. Powlet, 2 Atk. 55. Clinan v. Cooke, 1 Sch. and Lef. 35, courts at law are inclined to the same construction. are inclined to the same construction.

agreement, and for carrying the same into effect, they, the said A. B. and C. D., do, for themselves severally, and for their several and respective executors and administrators, covenant and agree, to and with each other, that each of them, the said A. B. and C. D., and their respective executors, administrators, or assigns, shall and will make, do, and execute, and join, and concur in doing and executing, all such acts, deeds, assignments, and assurances, as shall be requisite or proper, at their joint expense, according to the respective values of their estates and interests, for parting, severing, and dividing of the said messuages, lands, and hereditaments, (u) (so devised to them by the said will,) in manner following, that is to say,-

Division of the hereditaments.

That the whole of the said messuage and hereditaments situate at, &c., shall belong to, and become the sole property of, the said A. B., and that the whole of the said hereditaments at, &c., shall belong to, and become the sole property of, the said C. D.

Assignments to be to each other

And it is hereby declared and agreed, by and executed by between the said parties to these presents, that all the parties such other assignments and assurances shall be made and executed by and between the said parties, and all other necessary parties, as by their respective council shall be advised, for effecting the said partition as soon as conveniently may be after the execution of these presents, and for vesting the said messuage or tenement and premises at, &c., in the said A. B., his executors, administrators, and assigns, for the remainder of the said term of, &c., which shall be then to come and unexpired, and for vesting the said messuage, &c., at, &c., in the said

Arbitration as to an equivalent.

(To prevent a court of equity interfering, the agreement for a partition must be fair and reasonable.)

⁽u) If an arbitrator is to be appointed to for settling the payment of an equivalent, the clause may be inserted here, thus: "And it is further agreed, that it shall be referred to L. M., of, &c., for settling the equivalent which ought to be paid or made in money, or otherwise, by either of the said parties to the other of the said parties to the said parties t the said parties to the other of them, for making the said hereditaments at, &c., of equal value with the said hereditaments at, &c., aforesaid, to whose judgment and determination the said parties hereto shall and will stand and abide in all things.

C. D., his executors, administrators, and assigns, for the remainder of the said term of, &c., which shall be then to come, and unexpired therein. In witness, &c.

(16.)

An Agreement for an Exchange of leasehold Premises.

MEMORANDUM of an agreement made this —— Agreement. day of, &c., BETWEEN A. B., of, &c., (who is possessed of a piece or parcel of land, situate, &c., containing by admeasurement, &c., for a term of -years, commencing from, &c., subject to the yearly rent of, &c., reserved and subject to the covenants contained in a certain indenture of lease dated, &c., and made between, &c.,) of the one part, and C. D., of, &c., (who is also possessed of, &c.,) of the other part; the said A. B. and C. D. agree to Toexchange make exchange of their respective leasehold premises aforesaid, and forthwith to furnish each other Abstracts of with an abstract of their respective titles to the land to be exchanged; but such abstracts shall not be required to show the lessor's title; and upon the To execute respective titles of the lands being approved, shall assignments and will, on or before, &c., execute, at the expense of the other of them, such assignments and assurances with all necessary covenants as shall, by their respective council, be reasonably advised; (and if a sum of money be paid for equality of exchange, say, The said —— paying to the said ——, the sum of £ ——, for equality of exchange;) and Rents... lastly, that each of the said parties shall be entitled to the rents and profits of the said lands, so to be by them respectively taken in exchange as aforesaid, from the —— day of, &c., to which time all taxes, rates, and other charges whatsoever, payable in respect of the said premises, shall be paid by the party assigning the same. In witness, &c.

(17.)

Agreement by Landlord to build up Premises destroyed by Fire.

Parties.

ARTICLES of agreement made, &c., BETWEEN (landlord), of, &c., of the one part, and the (lessee), of, &c., of the other part.

Recital.

WHEREAS, by indenture, &c. (recite the lease, and set forth the covenant for insuring the buildings,) and that the premises, or a part, (as the fact is,) were consumed or damaged by accidental fire, and that the insurance office, declining to re-build, has paid down the insurance money. and that the parties hereto, in pursuance of the covenant contained in the said indenture, have agreed to re-build the same, under the stipulations Covenant to hereinafter expressed. Now these presents

WITNESS, that, in pursuance of the said agreement, and of the said covenants in the said in part recited indenture of lease contained, and for and in consideration of the sum of £ —, of lawful money of Great Britain, to the said (lessor), paid by the said office or company, called the, &c., insurance office, he, the said (lessor), doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said (lessee), his executors, administrators, and assigns, that he, the said (lessor),(v) his executors or administrators, shall and will, within the space or time of six calendar months, from or next after the day of the date of these presents, erect and build, or cause to be erected and built, in a good, substantial, and workmanlike manner in all things, a messuage, &c., in and according to the same or like elevation, plan, form, and manner, as the premises were or stood before the same were so consumed by fire, being the elevation, plan, and form, and manner, mentioned in the schedule or specification thereof hereafter written; AND also, that he, the said

Materials.

(w) If the lessee is to re-build, this precedent may be altered accordingly.

(lessor), shall and will find and provide such good and proper materials of all kinds whatever, as together with the materials not consumed by the said fire, and as are sound and good, shall be sufficient for erecting and completing the said messuage, &c., according to the plan, and in the manner, aforesaid; PROVIDED ALWAYS, nevertheless, and it Provision in is hereby declared and agreed, by and between the deviated said parties, that in case either of them, or the exe-from. cutors, administrators, or assigns, of either of them, shall require any more or other work, addition, or improvement, to be made or done, in or about the said messuage or premises, saving the repairing thereof, than is contained in the schedule hereunder written, and the other of the said parties shall consent thereto, the same shall be made and done at the sole expense of the party requiring the same, his executors, administrators, or assigns, unless otherwise agreed by or between the said parties, to be testified in writing under their respective hands subsequently to the date of these presents. subsequently to the date of these presents. And Thelease be-whereas the said in part recited indenture of lease is ed a new lost or destroyed, now it is hereby further agreed and one to be declared that the said (lessee), his executors, administrators, and assigns, shall have a new lease granted, or indenture of lease executed, to him and them, by the said (lessor), his heirs, executors, and administrators, at the request and costs of him the said (lessor), containing the same or like terms, conditions, covenants, and agreements, in all respects, for the residue now to come of the term of years by the said indenture of lease granted, as the same indenture, and the counterpart thereof, does or did contain in relation to the said lease and premises; and that in the mean time, and until such Lessee to lease shall be granted, or indenture executed, he, enjoy until the said (lessee), his executors, administrators, and outed. assigns, shall have, hold, and enjoy, the messuage, &c., so to be newly erected and built as aforesaid, with all and every the appurtenances thereof, upon and subject to the same or like terms, conditions,

covenants, and agreements, respectively, save only that an abatement, after the rate of the sum of £ — per annum, shall be made and allowed to him and them until such time as the said messuage. &c., shall be re-built, and be put into a tenantable state or condition; and moreover, that he, the said (lessee), will execute a counterpart of the said indenture when tendered to him for that purpose; AND &c., (add, if required, a clause of arbitration for referring differences, see p. 97). In witness, &c.

(18.)

Form of an Agreement for Purchase, whether freehold, copyhold, or leasehold.

Parties.

ARTICLES of agreement made and entered into this —— day of, &c., BETWEEN A. B., of, &c., for himself, his heirs, executors, and administrators, of the one part, and C. D., of, &c., for himself, his heirs, executors, and administrators, of the other part.

Consideration.

The said A. B., in consideration of the sum of £ —, paid to him by the said C. D., at or before the execution of this agreement, and of the further sum of £ —, to be paid at the time hereinafter mentioned, doth agree to sell, to the said C. D., all, (w) &c., with their rights, members, and appurtenances.

Abstract

And the said A. B. doth hereby agree that he will, on or before the —— day of, &c., next, make out and deliver, unto the said C. D., or his solicitor, an abstract of his title(x) to the said here-

If copyhold. If leasehold.

(w) If copyhold, say, "All that customary or copyhold messuage," &c. If leasehold, say, "All that leasehold messuage, &c., for the residue of a term of —— years yet to come and unexpired, and now vested in the said A. B. by virtue of an indenture dated, &c., and made between," &c. (x) If copyhold, say, "To the said copyhold hereditaments and pre-

Copybold.

Leasehold.

If leasehold, say," To the said leasehold hereditaments and premises;" and if it be intended that the abstract shall not extend to the title of the original lessor, say," But which abstract shall not extend to, or comprise the title of, the lessor of the said premises," which will prevent the necessity of the production of the title of the lessor, which otherwise would probably be required.—See Fildes v. Hooker, 2 Mer. 424.

ditaments and premises, and will, at his expense, deduce a clear title thereto.

And also, that he, the said A. B., or his heirs, Stipulation and all other necessary parties, shall and will, on or conveyances before the —— day of —— next, on receiving of and from the said C. D., the said sum of £ ----, remainder of the said purchase money, execute (y) a proper conveyance (or say, "proper conveyances and assurances") for conveying and assuring the fee simple and inheritance of and in the said hereditaments and premises, with the appurtenances, unto the said C. D., his heirs or assigns, or as he or they shall direct or appoint, free from all incumbrances whatsoever; (except, &c.)

And the said C. D. hereby agrees with the said Stipulation A. B., that he, the said C. D., his heirs, executors, remainder administrators, or assigns, shall and will, on (z) of purchase money. the execution of such conveyance ("or conveyences") as aforesaid, pay the sum of £ --- unto the said vendor, his executors or administrators.(a)

And it is hereby further agreed, by and between

(y) If copyhold, say, "Make and execute a proper surrender and assur- Copyhold. sace (or say, proper surrenders and assurances) in see simple, according to the custom of the manor of E. aforesaid, of the said hereditaments and premises, unto the said C. D., his heirs and assigns, free from all charges and incumbrances, except only the rents, suits, and services, respectively, due or payable to the lord (or lady) of the said manor for the time

being.

If lessehold, say, "Execute a valid assignment, or other proper and Leasehold.

If lessehold, say, "Execute a valid assignment, or other proper and Leasehold. effectual assurances, of all and singular the said premises, for the then residue of the said term, and all assignments of the same, unto the said C. D., his executors, administrators, and assigns, free from all incumbrances, except only the rent, covenants, and agreements, in the original indenture of lease reserved and contained, on the tenant or assignee's part to be paid and performed."

(z) If copyhold, say, "On the making and executing such surrender and Copyhold.

assurance (or surrenders and assurances)."

If leasehold, say, "On the execution of such assignment or assurances Leasehold.
as aforesaid, pay," &c.

(s) If copyhold, say, "That the surrender, and all fees and fines in re-Copyhold.
spect of the same, and of the admission of the said C. D., shall be at the

expense of him the said C. D.

(The steward of the manor in general prepares the surrender, and can insist upon doing so.— Rex v. Rigge, 2 B. & A. 550. The fine is not payable until admittance.—Rex v. Lord of the Manor of Hendon, 2 T. R. 484.

And must be paid for by the purchaser.—Drury v. Mann, 1 Atk. 98. And it seems to be so notwithstanding the vendor has agreed to surrender the premises at his own expense.—Graham v. Sime, 1 East, 632. But the tendor must be admitted previous to surrendering to the purchaser, therefore if he has not been so, he must pay for such admittance.—Drury v. Mann, 1 Atk. 96 n.) the said A. B. and C. D., as follows, (that is to say,)—

Expense of conveyance.

That the conveyance (or conveyances) shall be prepared by, and at the expense of, the said C. D.; and all attested copies required by the said C. D. shall be defrayed by him.

And that the said C. D. shall be entitled to the possession, and rents, and profits, of the said pre-

mises, from the said —— day of, &c.

If purchase not completed.

And that if the said conveyance(b) (or conveyances) shall not be executed and perfected by the necessary parties, and the purchase money paid on or before the —— day of, &c., then, and in such case, the said C. D., his heirs, executors, or administrators, shall, from the said —— day of, &c., pay interest for the said purchase money, unto the said A. B., his executors or administrators, after the rate of £4 per cent. per annum.(c) In witness, &c.(d)

Copyhold.

Lessehold.

(b) If copyhold, say, "Surrender (or surrenders) shall not be made and perfected."

If leasehold, say, "Assignment (or assignments) shall not be executed and perfected." Clause that (c) Sometimes the following clause is added: "And it is hereby agreed, if a good that if the said (vendor) shall not be able to make out a good title to the title cannot said hereditaments, this agreement shall be void, and the deposit money

returned to the said (purchaser), with interest for the same, after the rate

On taking possession under the agreement.

be made.

(d) If a person is let into possession of premises under an agreement for sale, and before any conveyance is executed, it will be construed as a tenancy at will, and that upon a demand made, possession may be recovered by the vendor by ejectment.—Doe d. Hiatt v. Miller, 5 C. & P. 595. An occupation under an agreement for the sale of premises, if a title could be made, creates a tenancy.—Doe d. Newby v. Jackson, 2 D. & R. 514. 1 B. & C. 448.

In an agreement for the sale of leasehold premises, to be paid for by instalments, it was stipulated that, in default of payment of the instalments at specified times, the former instalments should be forfeited, and that the vendor should not be compellable to convey, upon which the purchaser was let in possession, and made default, he was from thenceforth a mere tenant upon sufferance.—Doe d. Moor v. Lawder, 1 Stark. 308. where the vendor of leasehold premises for a term, before the whole of the purchase money was paid, agreed with the purchaser that he should have possession of the premises till a given day, paying the reserved rent in the mean time; and if he did not pay the residue of the purchase money on that day, he should forfeit the instalments already paid, and should not be entitled to the assignment of the lease; the purchaser being thus put into possession, it was considered that if the residue of the purchase money was not paid at the day appointed, no tenancy was created, and that the vendor might maintain ejectment without any notice to quit, or demand of possession.—Doe d. Leeson v. Sayer, 3 Camp. 8. But where it was agreed by the purchaser, under an agreement for an assignment of lease, who

was let into possession, that he would pay the lesses until the completion of the assignment, at the rate of so much per year; such was held to constitute the relation between landlord and tenant between the parties. Saunders v. Musgrave, 6 B. & C. 524. 9 D. & R. 529. 2 C. & P. 294. It appears that where a person is put into possession upon an agreement for the purchase of land, he cannot be ousted by ejectment before his lawful possession is determined by demand of possession or otherwise.—Right d. Lewis v. Beard, 13 East. 210. In an action on an agreement for not accepting a lease, if it appear that there was a person who had an interest in the premises, and it be not proved at the trial that such person was a party to the lease tendered, the plaintiff cannot recover. Neither, under such circumstances, is he entitled to recover for use and occupation, though the defendant may have received rent from the under-tenants.—Rumbell v. Wright, 1 C. & P. 589. A party who has been let into the possession of hand, under a contract for sale, which has not been completed, is a tenant at will to the vendor.—Ball v. Cullimore, 2 C. M. & R. 120. 1 Gale, 96.

Where a letter contains the entire terms of an agreement for the pur- What neceschase of lands, it is not necessary for the plaintiff to prove that he accepted sary to make

the terms.—Boys v. Ayerst. 6 Madd. 316.

In order to form a contract, by letters of which the court will decree a specific performance, nothing more is necessary than that the amount and nature of the consideration to be paid on one side, and received on the other, should be ascertained, together with a reasonable description of the subject matter of the contract.—Kennedy v. Lee, 3 Mer. 441.

An agreement to purchase was established upon a correspondence referring to the terms of such agreement.—Ogilvie v. Foljamb, 3 Mer. 53. Where the agreement for purchase is drawn up and executed, the construction thereof will not be affected by the previous letters.—Farquharson

s. Barston, 4 Bligh N. S. 560.

The written undertaking of one party will be enforced, although the other party is not mutually bound by writing.—Palmer v. Scott, 1 Russ. and Mylne, 391. For an agreement signed by one party only, is good to charge him within the statute of frauds.—Seton v. Slade, 7 Ves. jun. 289. And semble, that a contract signed by one party only may be enforced in equity by the other.—Martin v. Mitchell, l J. & W. 426. But the party not signing, by filing a bill for a specific performance, makes it binding on himself.—Id. It is doubtful whether the marty who have himself.—Id. It is doubtful whether the party who has signed only is at liberty to recede from it, until the other party has done some act to bind redf.—Id.

According to the Roman and English law as administered in both Consideracourts of law, and in equity, a fixed price is an essential ingredient in a tions in contract for sale. A contract, therefore, which does not settle the price is agreements. valid, and (complete only when and if the party to whom it is referred shall fix it, and is otherwise totally inoperative.—Milnes v. Grey, 14 Ves. jun. 408.

An agreement of sale, according to the valuation of two persons, one Valuation. chosen by each party, or of an umpire to be appointed by those two, in case of disagreement, was carried into effect.—Id. But specific performance was refused under a contract for sale, at a price to be fixed by arbitrators within a certain time; or if they should not agree to make their award within the time, by an umpire also within a limited time, the con-struction of the contract, which required the delivery of the award in writing to each party, being that though the consequential acts, such as executing the conveyances, &c., might be done by representatives, it was, with reference to the terms, to be fixed by the award personal upon the parties.—Blundel v. Buttargh, 17 Ves. jun. 232. Under a contract for sale, at a price to be fixed by an award within a limited time, during the lives of the parties, the death of one is not an accident against which the −Id. court will relieve.

Provided the name be inserted in an instrument in such a manner as to Signature. have the effect of authenticating it, the requisition of the act with respect to signature is complied with, and it does not matter in what part of the instrument the name is found.—Ogilvie v. Foljamb, 3 Mer. 53. There must be a signing, either by an actual signature of the name, or something intended by the writer, to be equivalent to a signature, such as a

a contract.

(19.)

An Agreement for an Assignment of a Lease for Lives.

Parties.

AGREEMENT, &c., BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part. said A. B., in consideration of the sum of, (e) &c., to be paid to him by the said C. D., as hereinafter mentioned, doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said C. D., his executors, administrators, and assigns, that he, the said A. B., his heirs, executors, or administrators, shall and will, on or before the ---- day of, &c., next ensuing, at the costs and charges of the said C. D., his executors and administrators, execute a proper conveyance or assurance for conveying, assigning, and assuring, ALL that, &c., with the appurtenances, for and during the lives of R. F., G. H., and J. K., and the life of the longest liver of them, and held by the said A. B., under and by virtue of a certain indenture of lease dated, &c., and made between, &c., together with the said lease, subject to the yearly rent of twenty shillings, made payable to the said A. B., in manner as in such lease is mentioned, and to the covenants therein contained; and that he, the said A. B., shall and will forthwith furnish the said C. D., or his solicitor, with an abstract of the title to the said premises, for and during the lives aforesaid; but such abstract, it is agreed, shall not extend to or comprise the title of Covenant to the lessor of the said premises; AND the said C. D. chasemoney doth hereby for himself, his heirs, executors, and

Abstract.

pay pur-

Premises.

For lives.

mark by a marksman.—Selby r. Selby, 3 Mer. 2. Although an agreement be not signed, the party is bound by a letter containing the terms, which by the contents can be connected, and identified with the agreement.

—Coles v. Trecothick, 9 Ves. jun. 250. A paper written by a party is admissible in evidence against such party, although it is signed by a third person.—Alexander v. Brown, 1 C. & P. 288.

now paid by way of deposit, and in part of the purchase money, and of the further sum of," &co. (as above.) administrators, covenant, promise, and agree, to and with the said A. B., his heirs, executors, and administrators, that on the execution of such conveyance, assignment, or assurance, as aforesaid, by the said A. B., his heirs, executors, or administrators, he, the said A. B., his, &c., shall and will well and truly pay, or cause to be paid, unto the said A. B., his executors or administrators, the said sum of, &c.,(f) (the full consideration money agreed upon for the hereditaments hereinbefore mentioned, for and during, &c.); AND it is hereby mutually agreed, between the said For renewal parties hereto, that in case they the said (cestui que case of death vies), or any or either of them, shall happen to before a cordie(g) before, &c., now next ensuing, that then the

(f) If a deposit be made, say, "Remainder of the said purchase Deposit.

(g) In agreements for sale of leasehold for lives, a clause should be in- Clause as to troduced to meet the possibility of a life dropping between the time of lives drop-entering into the contract and the completion of the purchase. If nothing ping. is said on this subject, as the vendor is in equity considered only as a trustee for the purchaser, the risk must be the purchaser's. The re- Stipulations served rent should also be mentioned, and if only part of the leasehold when part of estate is to be conveyed, the contract should state the apportionment of leasehold the same between the vendor and purchaser; and in this last particular, premises are snother clause should be added, to the effect of compelling the vendor and sold. purchaser to enter into a covenant in the intended conveyance to join tegether in surrendering up the subsisting lease when a life drops to the surporate body, under whom the estate is held, to enable them to grant new and separate leases to the vendor and purchaser of their respective estates; that is, to the vendor of the estate retained, and to the purchaser of the portion sold for the lives remaining in the subsisting lease, and a new life to be nominated by them respectively, at the apportioned rents aforesaid, and upon such other terms and conditions as the lessor and the other interested parties may mutually agree upon; with a provision also, that in case the corporate body, or person of whom the estate is held, should refuse to grant separate leases, that they, the vendor and purchaser, shall, in the event aforesaid, still join in surrendering the subsisting lease to the lessors, to enable them to make a new lease of all the premises to the vendor for the remaining lives, and such other new life in the room of the decrased one as shall be nominated either by the vendor or purchaser, or by the terms stipulated for when the contract is entered into; and in this case, the parties must ascertain and fix the proportions to be paid by them respectively of the fines, fees, and expenses, consequent on the renewal, with a covenant that, as soon as the lease is executed, the lessee, his heirs or assigns, shall, at the joint expense of the parties, (if so agreed,) convey to the other his or their respective estate; that is, if the lease is to be made to the vendor, that he, his heirs or assigns, shall convey the estate comprised in the contract to the purchaser, his heirs or of them, subject to the apportioned rent, and to the performance of such of the covenants contained in the new lease as apply or relate to the premises sold, and if the lease is to be made to the purchaser, then vice verse; and to covenant that, until such conveyance be executed, the lease, his heirs or assigns, shall stand seized and possessed of the premises belonging to the other party, in trust for that other party, his beirs

said A. B., his heirs, executors, or administrators, shall and will, at his and their own proper costs and charges, renew the said lease of the said messuage, &c., therein comprised, with the said (lessor), or his successors, and add some other good life or lives in the room and place of such life or lives so dying, such new life to be nominated by the said C. D., his heirs or assigns, if he or they shall think fit; and in default of such renewal, that then the said A. B., his executors, administrators, and assigns, shall and will allow and pay unto the said A. B., his executors, administrators, or assigns, out of the said purchase money, the sum of \mathcal{L} —— for every such life so dropping within the term aforesaid; AND it is hereby further agreed, between the said parties, that the said C. D. shall be entitled to the rents and profits of the said premises from the —— day of, &c. In witness, &c.

(20.)

Agreement or Contract for letting a Dairy.

Conditions between A. B., of, &c., and C. D., of, &c., for letting the cottage, dwelling-house, and

or assigns. In case the estate be of copyhold tenure, a provision should be made against the payment of any fine, fees, and expenses, of admission by the vendor, though, if nothing is said on the subject, they will fall on the purchaser. (See note a to p. 117.)

Dangerous for vendor and pur-

It very often happens that the vendor and purchaser unadvisedly make their own agreement. This frequently leads to legal discussions, and is at all times dangerous. Proprietors of estates should never enter into and purchaser to written contracts, or receive part of the purchase money, without consulting their solicitor; for perhaps it may be necessary to stipulate specially, in the agreement for the sale, that the purchaser shall not rement, as it mostly leads shall not require a title beyond a certain period (see conditions of sale); or that the vendor shall not be compelled to furnish, at his expense, attested copies of deeds. This last stipulation applies where the vendor salls off part of an estate; in which case, if the purchaser is to pay for cussions.

It is in no sells off part of an estate; in which case, if the purchaser is to pay for case advisable to stiable to stiof years renewable on other desirable interests. pulate for the possession till the completion of the completion of the possession should be made in the agreement as to the possession should be made in the agreement as to the possession should be made in the agreement as to the period up to which the of the pur-of the pur-chase. sion should be made in the agreement as to the period up to which the vendor is to pay and clear off all taxes, &c. In other respects, the contract must be regulated by the peculiar circumstances of the case.

lands, hereinafter mentioned, with the dairy of cows, and produce thereof.(h)

First, the said A. B. doth hereby agree with the Agreement said C. D., that he, the said C. D., shall and may for tenant to hold cottage, from the —— day of, &c., possess and enjoy the cottage or dwelling-house, called the, &c., in the parish of, &c., aforesaid, and now in the possession of the said C. D., together with the, &c., thereunto belonging, together with the pieces, &c., hereinafter

mentioned, called, &c.

Also, that the said A. B. shall and will, from the A.B. to find — day of, &c., next, to the said — day of, fodder for the said — day of, fifty cows. &c., find, provide, maintain, keep, and fodder, to and for the use and benefit of the said C. D., fifty good cows, fit and proper for a dairy, and permit and suffer the said C. D., during the term last aforesaid, to have and to take the milk, produce, and increase, of the said cows, to and for his own use and benefit; and in case any of the said cows In case of shall die, or by any accident lose their milk, or be- ows dying, A. B. to procome dry and wholly unprofitable, during the term vide other last aforesaid, then, and in either of the said cases, cown. the said A. B. shall either provide other cows in full milk in the place of those dying or losing their milk, or make such abatement or allowance out of the rent hereinafter agreed to be paid as shall be reasonable, and is usual in like cases, not exceeding, &c.(i)

Also, it is agreed that the said cows shall have Cows to the after-grass of the following closes of land, (that have the after-grass is to say,) all, &c., containing, &c., which said of certain lands are also situate in the parish of, &c., afore-closes of said.

Also, it is agreed that the said cows shall have a Pasturage. fortnight's pasturage in certain fields called, &c.,

(A) Contracts, (operating, in fact, as leases,) similar to the above, are usual in the west of England. Goods and chattels may be let for years.

⁻Bec. Abr. tit. Leases. (A.)
(i) Here the abatement should be specifically mentioned, and after may follow, "Which said cows are to have the sole and entire pasturage of all, &c., containing, &c., situate, &c., and are to be hained up for such dairy on the —— day of, &c., next, and to be stocked therewith on the —— day of, &c., next, or sooner if the said C. D. shall be so minded or desirous."

lying in the said parish; such fortnight to commence at the time of the said last mentioned field

3

being first stocked.

C. D. to have leave to depasture a horse.

Also, the said A. B. doth hereby agree, that he, the said A. B., shall and will permit and suffer the said C. D. to keep and depasture a horse, mare, or gelding, on any part of the said premises where the said cows shall be feeding, at any time during the said term, ending as aforesaid, on the —— day of, &c.; and if the said C. D. shall keep a mare on the said premises, and she shall have a colt, then the said A. B. shall and will permit and suffer the said C. D. to depasture such colt and mare until the - day of, &c., next.

C. D. to keep pigs.

Also, the said A. B. doth hereby agree, that he, the said A. B., shall and will permit and suffer the said C. D. to keep pigs in the barton of the farm now in the occupation of the said A. B., or elsewhere on the said farm, such pigs being properly ringed, and doing no damage to the land, hedges,

or apples, of the said A. B.

As to fuel and coals.

Also, the said A. B. doth hereby agree to allow to the said C. D., such fuel for the use of the said dairy as he can conveniently spare from the said farm; and to carry at his, the said A. B., own cost and expense, such coals as the said C. D. may want for the use of the said dairy, from, &c., he, the said C. D., paying for such coals, and also paying the tolls at the turnpike gates through which such coals shall be brought.

As to litter for cows and calves.

Also, the said A. B. doth hereby agree to allow the said C. D. sufficient litter for his pigs, cows, and calves, and also hay for the sucking calves; Allowance of and also one hogshead of cyder for every twenty eider to A.B. hogsheads he, the said A. B., shall make from the - day of ---- next, during the said term, on the said farm.

A.B. to have sale.

Also, the said A. B. doth hereby agree to cause chocos and to be carried, at his own expense, the butter and butter to the cheese of the said C. D., the produce of the dairy, either to, &c., in the county of, &c., or to, &c., in

the county of, &c., or in any other place not more distant from, &c., aforesaid, than, &c., at any time

or times at the request of the said C. D.

And the said A. B. doth hereby also agree, that In case of in case all of the said cows shall not have calved by cows not the —— day of, &c., next, he, the said A. B., shall certain time and will allow out of the rent hereinafter agreed to be made. be paid, at and after the rate of five shillings per week, for each cow that shall not have so calved, until the time that such cow shall drop her calf.

And the said C. D., in consideration of the pre-supulations mises aforesaid, doth, on his part and behalf, agree on the part with the said A. B., that he, the said C. D., shall and will well and truly pay, or cause to be paid, to pay for unto the said A. B., his executors, administrators, rent, use, and produce, by or assigns, the sum of £——, of lawful money of quarterly Great Britain, as and for the rent, use, and produce, payments. of the said fifty cows, at the four quarterly payments hereinafter mentioned, (that is to say,) the first quarterly payment to be made on the day of, &c., next, for which the said C. D. is to be allowed the usual interest; the second quarterly payment on the —— day of, &c., next; the third quarterly payment on the —— day of, &c., next; and the fourth quarterly payment on the --- day of, &c., next.

And also, that he, the said A. B., shall and may, A.B. to stock at his will and pleasure, stock with sheep the said with sheep. lands, of which the said C. D. is to have the aftergrass, from the —— day of, &c., next, to the end of the said term.

Also, that the said C. D. shall not nor will keep the said horse, mare, or gelding, in the stable.

And further, that he, the said C. D., his execu- c.D. to yield tors, administrators, and assigns, (if the tenant's upat the end interest is intended to be transmissible,) shall and will, at the end, expiration, or other sooner determination, of the said term, peaceable and quietly leave, surrender, and yield up, unto the said A. B., his executors, administrators, and assigns, all that the said cottage or dwelling-house, hereinbefore

mentioned, with the, &c., land and premises here-inbefore described; and also such cows or milch kine as shall or may be then living(j) and depasturing, or kept or fed in or upon the several closes or parcels of land hereinbefore mentioned and described, or any or either of them, so let, or agreed to be let, for the use and benefit of the said C. D., by virtue of these presents. In witness, &c.

(j) Bacon, in his Abridgment, title leases (A), says, "The interest of a tenant in goods and chattels differs from the interest which he hath in lands or the like; for if one let on lease for years a stock of live cattle, such letting or lease is good, and the tenant shall have the use and profit of them during the term; but yet the owner or lessor hath not any reversion in them in like manner as he hath in respect of land to grant them over to another, either during the term or after, till the tenant hath re-delivered them to him, for the lessor or owner hath only a possibility of property in case they all outlive the term."

OBSERVATIONS AND CASES.

It requires a legal notice to quit, or a surrender Tenancies in writing to bar the interest of the creditors of a from year to year. tenant from year to year.(k) The substitution of a Acceptance third person, (in pursuance of a previous agree. by landlord ment between the landlord and tenant,) in the place tenant. of the tenant from year to year, with the consent of the landlord, determines the former tenancy; (1) but such third person must take possession.(m) By a tenant from year to year entering into an agreement with his landlord for a lease to himself and another of the said premises, and they enter and occupy, such contract and possession determines the first tenancy.(n) The landlord by accepting the key of the house de-Tenant's de-mised under a parol agreement, and the possession possession. being quitted by the tenant, precludes him from recovering subsequent rent.(o) An irregular notice by a tenant may be treated as a surrender of the tenancy.(p) A landlord, by recognizing a notice given by his lessee to the under-tenant, discharges the lessee up to that time. (q) A landlord by Exercising letting the apartments of his lessee who had quitted acts of ownership the same in the middle of his year, cannot recover by landlord

(m) Taylor v. Chapman, Peake's Add. Cas. 19. But if the third person was insolvent, and the tenant was aware of it when he recommended the under-tenant, it is a fraud, and the tenant still remains liable for the rent.

Bruce v. Ruler, 2 Man. and Ryl. 3.

(a) Hamerton v. Steed, 5 Dow. and Ryl. 206. 3 Barn. and Cres. 478.
(c) Whitehead v. Clifford, 5 Taunt. 518. But it appears that a mere perol licence by landlord to quit is not sufficient for the tenant from year to year created by parol.—Mollet v. Brayne, 2 Camp. 103. S. P. Thompson v. Wilson, 2 Stark. 379. Yet if the landlord accepts possession, this destroys his right to subsequent rent.—Grimman v. Legg, 2 Man. and Ryl. 438. 8 Barn. and Cres. 324. In fact, complete possession should be given up by tenant, or the landlord accept another in his room.—Hurding s. Crethorn, 1 Esp. 57.

(p) Aldenburgh v. Peaple, 6 Car. and Payn. 212.

(q) Harding v. Crethorn, 1 Rsp. 57.

⁽k) Doe d. Read v. Ridout, 5 Taunt. 519.
(I) Stone v. Whiting, 2 Stark. 235. The acceptance by the landlord, if an under-tenant, in respect to a tenancy from year to year, is a sufficient surrender of the tenant's interest by the act and operation of law.—
Thomas v. Cook, 2 Barn. and Alder. 119. 2 Stark. 408. And see Phipps
v. Sculthorpe, 1 Barn. and Adol. 50.

lodgings.

Re-letting by landlord.

in respect to from him for subsequent rent during the time the lodgings may be unoccupied.(r) But a bill being stuck up in the window for letting will not prevent the landlord recovering where the tenant has left without notice.(s) Nor by merely lighting fires, or using fires, will not deprive the landlord of his right to rent.(t) The landlord, by letting premises within the next half year, after a tenant from year to year had quitted without notice at the end of his current year, was not entitled to recover rent from the first tenant for the time up to the re-letting.(u) But if the fresh tenant did not take possession, the old tenant still remains liable.(v) A tenancy from year to year is created upon a tenant being let into possession under an agreement for a lease, and has paid the stipulated rent.(w) The occupation of premises, pending the execution of a lease, constitutes a relation of landlord and tenant, so as to enable the rent to be recovered upon a quantum valebat, although no distress can be made. (x)Yet although no rent be paid, nor the quantum ascertained at the time, still if the tenant, upon an account being drawn out and presented to him, names the amount due for half a year which he at first disputed, and such account being altered accordingly, this constituted such a tenancy by implication, that would enable the landlord to dis-

Surety.

train.(y) But where a party was to find a surety

⁽r) Walls v. Atcheson, 3 Bing. 462. 11 Moore, 379. 2 Car. and Payn. 268.
(s) Redpath v. Roberts, 3 Esp. 225.
(t) Griffith v. Hodges, 1 Car. and Payn. 419.
(u) Hall v. Burgess, 5 Barn. and Cres. 332. 8 Dow. and Ryl. 67.
(v) Doe d. Huddleston v. Johnston, McClal, and Vounce. 141. And Town

⁽v) Doe d. Huddleston v. Johnston, McClel. and Younge, 141. And see Johnston v. Huddleston, 7 Dow. and Ryl. 411. 4 Barn. and Cres. 922.
(w) Doe d. Westmorland v. Smith, 1 Man. and Ryl. 137. And such tenancy will be on the terms of the agreement for the lease, and the land-

tenancy will be on the terms of the agreement for the lease, and the landlord may distrain.—Mann v. Lovejoy, Rus. and Myl. 355. And so although the occupation had been for a number of years under an
unstamped agreement for a lease never tendered or demanded.—Weakly
d. Yea v. Bucknall, Cowp. 473.

(x) Hamerton v. Steed, 5 Dow. and Ryl. 206. 3 Barn. and Cres. 478.
Doe d. Hillingsworth v. Stennett, 2 Esp. 717. But the possession must
be obtained with the privity of the landlord; for where, upon the negotiation for a lease, the parties disagreed as to the terms, no tenancy was
created upon possession being gained without such privity.—Doe d.
Knight v. Quigley, 2 Camp. 505.

(y) Cox v. Bent, 2 Moor. and Payn. 281. 5 Bing. 185.

to join with him, and no agreement was signed, nor a surety offered, no tenancy was created. (z)A tenant from year to year is only bound to fair and How far a tenantable repairs, so far as to prevent waste or year to year decay of the premises, and not to substantial repairs, is bound to repair in the such as new roofing, &c.(a) And not being liable absence of to general repairs, is bound only to use the premises any stipulain a husbandlike manner, but no further.(b) It same. seems a tenant from year to year is not liable for permissive waste, nor is he liable to make good mere wear and tear of the premises.(c) If the pre- When premises become insecure for want of repairs, a tenant secure. from year to year may quit without notice, and will not be liable for rent afterwards.(d) Upon an agreement to become tenant by occupying, it will be an answer to a claim for rent if he shows that the house was not in such a reasonable state of repair as to be fit for comfortable occupation.(e) And if a tenant is bound to keep them in tenantable repair by agreement, he may quit if the premises become unwholesome for want of sufficient drainage, and they cannot be kept in repair without unreasonable labour and expense. (f)

Upon an agreement for underletting, where the Remedy for furniture was to be paid for by the under-tenant at agreement. an appraisement, he was excused from the performance of the agreement in consequence of the rent being in arrear when the tenant quitted the house.(g) Where A. having the equitable estate contracted with another for granting a lease of premises then in possession of a lessee when such term expired, and then joined with his trustees who had

breach of

⁽²⁾ Doe d. Bingham v. Cartwright, 3 Barn. and Adol. 326. And see John v. Jenkins, 1 Cromp. and Mee. 227. 3 Tyr. 170.

(a) 2 Esp. 590. If a house, he is only bound to keep it wind and water tight.—Anworth v. Johnson, 5 Car. and Payn. 239.

(b) And see Leach v. Thomas, 7 Car. and Payn. 328. But if under a comment to repair he must then sustain and repold the premises.—Id-

⁽e) And see Leach v. Thomas, 7 Car. and Payn. 328. But if under a covenant to repair, he must then sustain and uphold the premises.—Id.

(c) Torriano v. Young, 6 Car. and Payn. 8. As to covenants for repairs, see "Covenants" and "Leases."—Post.

(d) Edwards v. Hetherington, 7 Dow. and Ryl. 117. Rus. and Myl. 268.

(e) Salisbury v. Marshall, 4 Car. and Payn. 65. Edwards v. Hetherington, 7 Dow. and Ryl. 117. Rus. and Myl. 268.

(f) Collins v. Barrow, 1 Mood. and Rob. 112.

(g) Partridge v. Sowerby, 3 Bos. and Pul. 172.

the legal estate in granting a lease to another before the outstanding lease had expired; held that A. was liable to an action before the expiration of the lease.(h) In an action on an agreement for not accepting a lease, if it appears that some other person has an interest in the premises, it must be proved at the trial that such person is made a party to the lease tendered, or the plaintiff cannot recover; neither is he entitled to recover for use and occupation, though the defendant may have received Procuring a rent from the under-tenant.(i) Where a declaraperson to grant a lease tion in assumpsit stated that the plaintiff would procure J. S. to grant a lease to the defendant, the latter promised to pay the £170; and it was proved that J. S. having agreed to grant a lease to the plaintiff, the latter originally undertook to assign it to the defendant for the consideration mentioned; but that afterwards a lease, to which the plaintiff was a party and assented, was granted immediately by J. S. to the defendant, in which the considera-

Counts in declaration. tion to be paid by the latter to the plaintiff was Held that the evidence merely not mentioned. amounted to proof of the substitution of a new contract to procure a lease from J. S. to the defendant in lieu of the original contract, and consequently that there was no variance.(j) The plaintiff in his first and third counts of his declaration, alleged that, at the time of making the agreement with the defendant, he was possessed of a house for a certain term of years, to expire on the 25th of December, 1826; and in the second, that he was entitled to the term under and by virtue of a certain contract. The proof was that the plaintiff was possessed for a term of only twelve years, and that there was no contract or agreement under which he was at that time entitled to an extension of the term. that this was a fatal variance, although it appeared that the plaintiff had since become possessed of a

⁽A) Ford v. Tiley, 9 Dow. and Ryl. 444. 6 Barn. and Cres. 325.
(i) Rumball v. Wright, 1 Car. and Payn. 589.
(j) Boone v. Mitchell, 1 Barn. and Cres. 18.

lease to expire in December, 1826.(k) If a party As to failure who lets premises agrees to give possession thereof, possession. but fails to do so, the lessee may recover damages against him, and is not driven to bring an ejectment against a wrongful occupier who refuses to quit. (1) If an agreement for a lease contain no stipulation as As to coveto covenants, the party agreeing to take the lease nants. is entitled to a lease containing only the usual covenants between a landlord and tenant; and it seems to be immaterial whether a plaintiff has or has not had notice that the defendant derived his title under a lease from another person, where the agreement amounts to a representation on the part of the defendant that he was at liberty to grant a lease conformable to the terms of such agreement. (m) But a Underlease. party who enters into an agreement for an underlease, without inquiring into the covenants of the original lease, has constructive notice of all the usual covenants in the original lease. (n)where a party entered into an agreement with a lessee for an underlease, and informed him of the nature of the business which he meant to carry on in the premises, and the lessee did not apprise him that there was a covenant in the original lease prohibiting such business, the silence of the lessee was equivalent to a representation that there was no such prohibiting covenant.(o) It is the duty of a Idem. person contracting for an underlease to inform himself of the covenants contained in the original lease; and if he enters and takes possession of the property, he will be bound by those covenants.(p) Where the original lease contained usual covenants, Idem. and the defendant entered into an agreement with the plaintiff for an underlease, and took possession

⁽k) Boutledge v. Grant, 1 Moor. and Payn. 717. 4 Bing. 653. 3 Car.

⁽i) Coe v. Clay, 5 Bing. 429. 3 Moor. and Payn. 57.
(m) Van v. Corpe, 3 Myl. and Keen, 269. The usual covenants are not construed to extend to restriction against particular trades.—Propert v. Parker, 3 Myl. and Keen, 280.
(a) Flight v. Barton, 3 Myl. and Keen, 282.
(b) Idem.

⁽p) Cosser v. Collinge, 3 Myl. and Keen, 983

of the premises, no reference to covenants being made in the agreement, but the defendant's solicitor having had an opportunity of inspecting the original lease, it was held that the defendant was bound to accept a lease with the unusual covenants contained in the original lease. (q) A contract provided that a lease should be drawn, prepared, and executed, at the sole expense of the lessor, in an action on the agreement by the lessee, held that it was not necessary to aver that a lease was tendered to the lessor for execution.(r)

Tender of lease.

Specific performance (s) waste committed. Bill dismissed.

ment

Refusal to execute lease tendered.

Tenant committing breaches tenant in respect to term.

The court of chancery dismissed a bill for the specific performance of an agreement for a lease by Term expiring, and acts the plaintiff to the defendant, the term having expired before the hearing, and certain acts of waste committed by the intended lessee while in possession being so trifling, that a jury would give merely specific per- nominal damages.(t) Specific performance decreed formance of of a parol agreement for a lease, though denied by the answer on the evidence of one witness, confirmed by circumstances, and followed by acts of performance, such as taking possession and making improvements.(u) The refusal of tenant to execute a lease tendered, as satisfied with or not repudiating the agreement, is no ground for refusing him a specific performance.(v) A tenant having committed breaches of covenant by waste, or treating the land not entitled in an unhusbandlike manner, is not entitled to a to a specific performance of an agreement for a lease. (w) Executors of A. leased premises to B. for ten years, and B. covenanted not to assign the premises without A.'s consent. A. agreed to grant to C. a lease for ten years, from the end of B.'s term, subject to the reversionary COnsent. same covenants as were contained in B.'s lease. C. died before the lease was executed to him.

(q) Cosser v. Collinge, 3 Myl. and Keen, 283.
(r) Price v. Williams, 1 Mees. and Wels. 6.

(t) Idem.
(w) Morphett v. Jones, I Wils. C. C. 100.
(v) Gourlay v. Somerset, (Duke,) I Ves. and Beam. 68.
(w) Hill v. Barclay, 18 Ves. jun. 63.

⁽s) As to whether a specific performance of an agreement to grant a lease will in any case be decreed after the expiration of the term.—See Nesbit v. Meyer, 1 Swans. 226. 1 Wila. C. C. 97.

a bill against C.'s executors (who admitted assets) for a specific performance of the agreement, and offered so to qualify the covenants of the lease as that the executors should be no further liable thereon than they would have been on the covenants which ought to have been entered into by the testator, in case a proper lease had been made to him. The court of chancery decreed specific performance of this agreement, with a reference to the master, to settle the lease.(x) In a suit for a specific perform. Lessee by ance of an agreement to accept a lease, the court considered considering the defendant, (the intended lessee,) by as having waived obhis conduct, to have waived all objections to the jections to vendor's title, decreed a specific performance of the title. agreement, and referred it to the master to settle In settling the lease it became necessary for identifying the premises to produce before the master the original lease, under which the plaintiff was entitled to the property, and from which lease it appeared that the property in question was held with other property at one entire rent, and under some special covenants, no provision with respect to which was made in the agreement between the plaintiff and the defendant. On the hearing for further directions, these facts being brought before the court in the shape of exceptions to the report, it was held, that though the defendant had by his conduct waived his right to the production of the lessor's title, yet, as in the course of the proceedings, it had become necessary to produce that title, and that production showing that a sufficient lease could not be made to the defendant according to the agreement, the court would not enforce a spe-Insolveney. cific performance, and the bill was dismissed but without costs.(y) It is no defence to a bill filed against a landlord for specific performance of an agreement for a farming lease, by a person to whom the benefit of the agreement has been assigned, that the party with whom the landlord contracted has

⁽x) Phillips v. Everard, 5 Sim. 102. (y) Warren v. Richardson, 1 Yo. 1.

become insolvent, provided the assignee is solvent, and in a condition to enter into the usual covenants, and there is no evidence that the contract was entered into upon considerations personal to the Bankruptov assignor. (z) Where a landlord agrees to grant a lease to A., his executors and assigns, upon certain conditions, and A. assigns his interest in the contract to B., and then becomes bankrupt, B., on performing the conditions, has a right to enforce the agreement specifically, notwithstanding his assignor's bankruptcy; and this right is not effected by a proviso that in case of the bankruptcy of A. the landlord shall have power to re-enter, and sell the benefit of his contract, and the premises, and hold the proceeds, subject to his own claims for the use of A.'s estate.(a) The insolvency of the intended lessee is a good ground of objection to a bill brought by him for the specific performance of a contract to renew a lease.(b)

(z) Crosbie v. Took, l Myl. and Keen. 431.
(a) Morgan v. Rhodes, l Myl. and Keen. 435.
(b) Price v. Asheton, l Yo. and Col. 441.

Insolvency.

APPORTIONMENT OF RENT.(c)

Apportionment of rent is defined to be a Apportiondividing of rent into parts, according as the land ment of rent

(c) Sir William Blackstone, in his Commentaries, says, that rents are What are the last species of incorporeal hereditaments; that rent or render, reditus, rents. signifies a compensation or return, it being in the nature of an acknowledgment given for the possession of some corporeal inharitance, and that it is defined to be a certain profit issuing yearly out of lands and tenements corporeal; that it must be a profit; yet, that there is no occasion for it to be, as it usually is, a sum of money; for capons, horses, corn, and other matters, may be rendered, and frequently are rendered, by way of rent; and that it may also consist in services or manual operations; as, to plough so many acres of ground and the like; which services, in the eye of the law, are profits. This profit must be certain, or that which may be reduced to a certainty by either party. It must also issue yearly, though there is no occasion for it to issue every successive year; but it may be reserved every second, third, or fourth, year; yet, as it is to be produced out of the profits of lands and tenements, as a recompense for being permitted to hold or enjoy them, it ought to be reserved yearly, because those profits do annually arise, and are annually renewed; that it must issue out of the thing granted, and not to be part of the land or thing itself (wherein it differs from an exception in the grant, which is always of part of the thing granted); and that it must, lastly, issue out of lands and tenements corporeal; that is, from some inheritance whereunto the owner or grantee of the rent may have recourse to distrain; therefore, a rent cannot be reserved out of an advowson, a common, an office, a franchise, or the like. But a grant of such annuity or sum (or, indeed, out of any incorporeal hereditament) may operate as a personal contract, and oblige the grantor to pay the money reserved, or subject him to an action of debt; though it doth not affect the inheritance, and is no legal rent in contemplation of law.—See 2 Wood, 69. Laugher v. Humphrey, Cro. El. 524. And see

Black. Com. c. 2, p. 42.
In Littleton's Tenures it is said that there are three manner of rents,— Of different rent service; rent charge; and rent seck. And Wood, in his Institutes, or dispersion is so called because it has some corporeal service incident to it, as at the least fealty, or the feodal oath of fealty. For if a tenant holds his lands by fealty, and ten shillings rent, or by the service of ploughing the lord's land, and five shillings rent, these pecuniary rents being connected with personal service are therefore called rent service. A rent charge is where one grants to another a rent out of his land, with a clause of distress for non-payment. Rent seck (reditus siccus, or barren rent) is where a grant is made without a clause of distress.—See Lit. Ten. s. 213, 2 Wood, 69.

There are other species of rents which are reducible to these three. Rents of Rents of assize which are certain established rents of freeholders and ancient assize. copyholders of a manor, which cannot be departed from or varied. (Those of the freeholders are frequently called chief rents, reditus capitales; and both sorts are indifferently denominated quit rents, quieti reditus, because thereby the tenant goes quit and free of all other services.) Rack rent is Rack rent, only a rent of the full value of the tenement, or near it. A fee farm rent and fee farm is a rent charge issuing out of an estate in fee, of at least one fourth of the rent. value of the lands at the time of its reservation.—See Co. Lit. 143, a. Black. v. 2, c. 2, p. 43. (But Hargrave thought the name of fee farm rent was founded on the perpetuity of the rent or service, and not on M 2

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Co. Lit. 144-148, and Danv. Abr. 505.

according to out of which it issues is divided among two or more. As if a stranger recovers part of the land, a lessee shall pay, having regard to that recovered, and what remains in his hands. Where the lessor recovers part of the land, or enters for a forfeiture into part thereof, the rent shall be apportioned. So if a man lease three acres, rendering rent, and afterwards grants away one acre, the rent shall be apportioned. Before the statute 11 G. 2, c. 19, by the death of a tenant for life, in an intermediate quarter, such quarter was lost; for the law would not suffer his representatives to bring an action for the use and occupation, much less if there was a lease, and the remainder man had no right because the rent was not due in his time, nor could 11 G. H., o. equity relieve against this hardship by apportioning the rent. But by the 11 G. 2, c. 19,

1 Peere Wms. 392.

19, apportionment.

Distress.

the quantum.—See Harg. Co. Lit. 143 a., n. 5.) All rents are now recoverable by distress, by virtue of the statute 4 G. II., c. 28.

Rent is regularly due and payable upon the land from whence it issues

s. 15,(d) where any tenant for life shall happen to

if no particular place is mentioned in the reservation. And strictly, the rent is demandable and payable before the time of sunset of the whereon it is reserved, though perhaps not absolutely due till midnight.

(d) By an equitable construction of this statute, upon the death of oided under tenants in tail, the rent shall be apportioned where leases are determined the stat. 11 by their deaths.—Paget v. Gee, Amb. 198. 3 Swanst. 694. Land tax, quit rent, &c., not apportionable under this act, as between tenant for life and remainder man.—Sutton v. Chaplin, 10 Ves. jun. 66. Upon the renewal of a beneficial lease by a tenant for life, the fine was apportioned between him and the remainder man, in proportion to their respective interests.—Nightingale v. Lawson, 1 Bro. C. C. 440. A lessor of two houses adjoining each other, at one entire rent, conveyed one of them to a purchaser at an apportioned rent, without the consent of the lessee; it was held that such apportionment should have been made by a jury to give it validity, and that the lessee was not bound.—Bliss v. Collins, 1 Dow. and Ryl. 291. 5 Barn. and Alder. 876. A tenant for life, with power to lease by deed, &c., makes a parol demise from year to year: upon his death the lessee's interest determined, and the rent was apportionable.—Ex parte Smith, I Swans. 337. And in the same case, where some of the leases were by parol, and some in writing, but not conformable to the power of the tenant for life, upon his death, which took place before the expiration of the year, the rents were apportionable.—Id. The administrator of a tenant for life not having lived long enough to have a right to determine the yearly tenancy, the lands having been devised to him from a tenant in fee, it was held that he (the administrator) was not entitled to an apportionment of rent under s. 15 of this statute.—Botheroyd v. Wolley, 5 Tyr. 522. 1 Gale, 66. Where part of the lands had been demised to a third party prior to the parol demise to the leases for a year, which inthird party prior to the parol demise to the lessee for a year, which included such part, it was held that the lessee took an interesse termini in the part previously demised, and that while out of possession the rent was not suspended, but was apportioned, and might be distrained for.—Neale v. Mackenzie, 2 Cromp. Mee. and Ros. 84. 1 Gale, 119.

die before or on the day on which any rent was reserved or made payable upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant for life, the executors or administrators of such tenant for life, may, in an action on the case, recover of and from such under-tenant of such lands, &c., if such tenant for life die on the day on which the same was made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived of the last year, or quarter of a year, or other time in which the said rent was growing due as aforesaid, making all just allowances, or a proportionable part thereof respectively. The stat. 4 w. IV., c. 22, AND by the 4 W. IV., c. 22, for amending the said for amend. act of the eleventh year of king George the Second, ing the above act of respecting the apportionment of rents, annuities, 11 G. 11. and other periodical payments, (e) after reciting Reciting such act, and that doubts had been entertained that doubts had arisen whether the provisions of the said act applied to as to the every case in which the interests of tenants deter- of the act. mine on the death of the person by whom such interests have been created, and on the death of any life or lives for which such person was entitled to the lands demised, although every such case is within the mischief intended to have been remedied and prevented by the said act, and that it was therefore desirable that such doubts should And that by be removed by a declaratory law; and that by law certain were law, rents, annuities, and other payments, due at not apporfixed or stated periods, were not apportionable, (unless express provision be made for the purpose,) from which it often happened that persons (and their representatives) whose income was wholly or principally derived from these sources, by the determination thereof, before the period of payment arrived, were deprived of means to satisfy just demands; and other evils arose from

⁽c) By the statute for the commutation of tithes, 6 and 7 W. IV., c. 71, s. 86, it is enacted, that all rent charges payable under that act, shall be subject to all the several provisions of the above act of 4 W. IV., c. 29.

cited act.

And further

such rents, annuities, and other payments, not being apportionable, and which evils required remedy; it is therefore enacted and declared, that that rents rents reserved and made payable on any demise or leases deter- lease of lands, tenements, or hereditaments, which mining on the death of have been or shall be made, and which leases or the person demises determined, or shall determine, on the making them(though death of the person making the same, (although not, strictly such person was not strictly tenant for life thereof,)
speaking, to
nant for life) or on the death of the life or lives for which such or on the person was entitled to such hereditaments, shall, so tenant pur far as respects the rents reserved by such leases, and be consi-to the recovery of a proportion thereof by the person dered as granting the same, his or her executors or adminisprovisions trators, (as the case may be,) be considered as of the re- within the provisions of the said recited act.

And by section 2, it is therby further enacted, enacted, that that from and after the passing of this act, all rents, all rents and other pays service reserved on any lease by a tenant in fee, or ments, comfor any life interest, or by any lease granted under fixed per any power, (and which leases shall have been riods, to be granted after the passing of this act,) and all apportioned. rents charge, and other rents, annuities, pensions, dividends, moduses, compositions, and all other payments of every description in the United Kingdom of Great Britain and Ireland, made payable, or becoming due at fixed periods, under any instrument that shall be executed after the passing of this act, or (being a will or testamentary instrument) that shall come into operation after the passing of this act, shall be apportioned so, and in such manner, that on the death of any person interested in any such rents, annuities, pensions, dividends, moduses, compositions, or other payments as aforesaid, or in the estate, fund, office, or benefice, from or in respect of which the same shall be issuing, or derived, or on the determination by any other means whatsoever, of the interest of any such person, he or she, and his or her executors, administrators, or assigns, shall be entitled to a proportion of such rents,

annuities, pensions, dividends, moduses, compositions, and other payments, according to the time which should have elapsed from the commencement or last period of payment thereof respectively, (as the case may be,) including the day of the death of such person, or of the determination of his or her interest; all just allowances subject to and deductions in respect of charges on such rents, just allowannuities, pensions, dividends, moduses, com-deductions. positions, and other payments being made; and, Remedies that every such person, his or her executors, ing the spadministrators, and assigns, shall have such and portioned the same remedies at law and in equity, for recovering such apportioned parts of the said rents, annuities, pensions, dividends, moduses, compositions, and other payments, when the entire portion of which such apportioned parts, shall form part, shall become due, and payable, and not before, as he, she, or they, would have had for recovering and obtaining such entire rents, annuities, pensions, dividends, moduses, compositions, and other payments, if entitled thereto, but so that persons liable to pay rents reserved by any lease, or demise, and the lands, tenements, and hereditaments comprised therein, shall not be resorted to for such apportioned parts, specifically as aforesaid, but the entire rents of which such portions shall form a part, shall be received and recovered by the person or persons, who, if this act had not passed, would have been entitled to such entire rents, and such portions shall be recoverable from such person or persons, by the parties entitled to the same under this act, in any action or suit at law, or in equity.

And it is by section 3, provided and further Cases where enacted, that the provisions herein contained, shall the act is not to apply. not apply to any case in which it shall be expressly stipulated, that no apportionment shall take place, or to annual sums made payable in policies of assurance of any description.

(1.)

Deed of Apportionment of Rents of leasehold Property between two Purchasers.

Parties.

Recital of lease.

This indenture made the —— day of, &c., BB-TWEEN A. B. of, &c., of the one part, and C. D. of, &c., of the other part, WHEREAS by indenture of lease, bearing date the —— day of, &c., and made between (lessor), therein described, of the one part, and (lessee), also therein described of the other part, in consideration, as well as the costs and charges which the said (lessee) had been at in building the messuages or tenements, thereinafter mentioned, as of the rents and covenants thereafter reserved and contained, on the part and behalf of the said (lessee), his executors, administrators, and assigns, to be paid, done, and performed; the said (lessor), did demise unto the said (lessee), his executors, administrators, and assigns, ALL that piece or parcel of ground, with the appurtenances, situate, &c., to hold the same from —— day of, &c., then last during the term of — years, and three quarters of a year wanting ten days, and paying yearly the rent of £---, by quarterly payments, on the - day, &c., and subject to the several covenants contained on the part of the said (lessee), his executors, administrators, and assigns, Recital of to be kept, done, and performed; and whereas lessee put the said (lessee), did on or about the —— day of, to auction. &c., cause the said messuages or tenements comprised in the said recited indenture of lease, to be put up to sale in two distinct lots, pursuant to printed particulars and conditions published previously to such sale; at which sale the said A. B. and C. D. being the highest bidders were declared the purchasers of the messuages or tenements and premises comprised in the said in part recited indenture of lease; (that is to say,) the said A. B. was the purchaser of one of the said messuages with the appurtenances, being No. 1, &c., at or for the price or sum of £——, and the said C. D. was

Purchases by A. B. and C. D. the purchaser of the other of the said messuages at or for the price or sum of £---; AND WHEREAS by indenture bearing date the, &c., and made previously to the execution of these presents, between the said (lessee) of the one part, and the said A. B. of the second part, and the said C. D. of the third part, he the said (lessee) hath granted, &c., unto Recital of the said A. B. all that, &c., (parcels,) with the to A. B. of appurtenance to hold the same unto the said A. B., his part. his executors, administrators, and assigns, from the - day of, &c., during the then residue of the said term of —— years, granted by the said in part recited indenture of lease, subject nevertheless to the payment of £—, being one moiety or half At a moiety part reserved and made payable subject also to the and to the performance of the covenants, conditions, and performance of the covenance of the covenance of the covenants, in the same indenture of lease, con-nants. tained so far only as the same relate to or concern the messuages, tenements, and premises, thereby assigned; AND WHEREAS (recite the assignment of Recital of the other moiety to C. D.) and by the conditions of the condithe said sale it was stipulated that each of them, the as to the purchasers of the said messuages or tenements and of rent in premises, should pay the yearly rent or sum of moieties. £---- in respect of the premises by him purchased, being one moiety of the yearly rent or sum of £reserved by the said in part recited indenture of lease; AND WHEREAS for the more effectually apportant the intended the intended indemnity between them, the said A. B. and C. D., and their intended to be entered respective executors, administrators, and assigns, into and for indemnifying each of them, and his executors, administrators, and assigns, and the premises by him purchased, from the rents, covenants, and agreements, reserved and contained in the said in part recited indenture of lease which ought to be paid, kept, done, and performed, in respect of the premises purchased by the other of them, it hath been mutually agreed between them, the said A. B. and C. D., that they should enter into the covenants and agreements hereinafter contained. Now

of rent.

Witnessing THIS INDENTURE WITNESSETH, That in pursuance of the said agreement, and in consideration of the covenants and agreements hereinafter contained on Covenant by the part of the said C. D., he, the said A. B. for A. B. to pay himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree to and with the said C. D., his executors, administrators, and assigns, in manner following, (that is to say,) that he the said A. B., his executors, administrators, and assigns, shall and will from time to time, and at all times hereafter during the residue now to come and unexpired of the said term of years, and three quarters of a year, wanting ten days, by the said indenture of, &c., granted as aforesaid, well and truly pay, or cause, &c., unto the said (lessor), his executors, administrators, and assigns, or such other person or persons as shall from time to time be entitled to receive the said ground rent or yearly sum or rent of £being one moiety or half part of the said sum of £---, when and as the same shall become due and payable, according to the true intent and meaning of these presents and the said in part recited inden-And to per- ture of lease, and shall and will during the conform cove-tinuance of the said term perform, fulfil, and keep, all and singular the covenants, stipulations, and agreements, reserved and contained in the said in part recited indenture of lease on the part of the said (lessee), his executors, administrators, and assigns, to be kept, done, and performed, so far as such covenants, stipulations, and agreements, relate to, or concern, or ought to be kept, done, and performed, in respect or on account of the said messuage or tenement and premises so purchased by the said A. B. as aforesaid, and of, from, and against, all and every neglect, breach, or default, which shall or may at any time or times hereafter happen in the performance thereof respectively, And to in shall and will save, defend, and keep harmless, and indemnify the said C. D., his executors, administrators, and assigns, and his and their lands,

demnify C. D.

part.

tenements, goods, and chattels: AND MOREOVER, And in de-that in case the said C. D., his executors, adminis- C. D. to entrators or assigns, shall at any time or times here-ter and distrain. after, pay, sustain or be put unto any sum or sums of money, costs, charges, and expenses, for, or on. account, or in respect of, the said yearly rent or sum of £ ----, or of the said covenants and agreements hereinbefore contained, and agreed to be kept, done, and performed, by the said A. B., his executors, administrators, and assigns, as aforesaid, or any of them, then, and in every such case, it shall be lawful for the said C. D., his executors, administrators, or assigns, into and upon the said messuage or tenement and premises, so purchased by the said A. B., and comprised in the said in part recited indenture of assignment, bearing date, &c., to enter and distrain for all and every such sum and sums of money, costs, charges, and expenses, which the said C. D. shall sustain, bear, pay, or be put unto, and take, lead, drive, carry away, and impound, and in pound, detain, and keep, until the same sum and sums of money, costs, charges, and expenses whatsoever, sustained or occasioned by or attending the making, taking, and keeping, any such distress or distresses, shall be fully paid and satisfied; and in default of payment thereof, in due time after any distress or distresses shall be so made or taken, to appraise, sell, or dispose of, such distress or distresses, according to due course of law, in like manner as in case of distress taken for non-payment of rent reserved upon common leases; to the intent thereby, and therewith, or otherwise, the said C. D., his executors, administrators, and assigns, shall and may be fully paid and satisfied all and every such sum and sums of money, costs, charges, and expenses, as aforesaid; AND similar co-THIS INDENTURE FURTHER WITNESSETH, that, in C.D. to A.B. further pursuance of the said agreement, and in as in the consideration of the covenants and agreements part. herebefore contained, on the part and behalf of the said A. B., he, the said C. D., for himself, his heirs,

executors, administrators, and assigns, doth hereby covenant, &c., with the said A. B., his, &c., in manner following, (that is to say,) that he, the said C. D., his, &c., shall and will, &c. (Similar to the covenants, &c., entered into by A. B., from the first witnessing part.) In witness, &c.

(2.)

Declaration as to Apportionment of Rents, Fines, &c., to be paid by the respective Assignees.

Clause of apportionment of rents.

And it is hereby declared and agreed, by and between the said parties to these presents, and it is the true intent and meaning of them, and of these presents, that the reserved rents, customary fines of renewal, and incidental expenses, which, at any time or times, and from time to time, shall become due and payable, or shall be agreed to be paid for or in respect of the said lands and hereditaments, hereby assigned, or otherwise assured, or intended so to be, shall be contributed, borne, and paid, in the manner, and in the proportions, and by the persons, and their respective executors, administrators, and assigns, hereinafter mentioned, (that is to say,) — parts (the whole into — equal parts to be divided, of the said rents, customary dues, fines of renewal, and incidental expenses) by the said A. B., his executors, administrators, or assigns, for and in respect of those parts of the said lands and hereditaments which are to be held in trust for the said A. B., his executors, administrators, and assigns, as aforesaid, and the remaining - parts of the same rents, customary dues, fines of renewal, and incidental expenses, by the said C. D., his executors, administrators, or assigns, for and in respect of so much and such parts of the said lands and hereditaments as are mentioned or specified in the schedule thereof hereunder written, or hereunto annexed.

(3.)

Declaration and Consent as to Apportionment of Rent.

AND the said A. B., and at his instance, (and with Clause of his consent and approbation,) the said C. D. and apportion-E. F., as far as they lawfully may or can hereby ment of rents. consent and agree, and also direct and appoint, that the sum of, &c., a year, part of the said yearly rent or sum of, &c., (subject to a proportional part of the deduction to be made out of the said rent of £ — a year,) shall henceforth during the continuance of the now residue and remainder of the term of the said G. H., (lessee,) in part of the said lands and hereditaments hereby released and covenanted to be surrendered, or otherwise assured, or intended so to be, be payable and paid to the said A. B., his heirs and assigns, as his and their proportion of the said rent or sum of, &c., for or in respect of so many and such parts of the lands and hereditaments out of which the same rent is reserved, as are hereby released, and covenanted to be surrendered, or otherwise assured, or intended so to be.(f)

Declaration that the Residue of leaseholds remaining unsold shall be subject to the entire Rent.

AND lastly, it is hereby declared and agreed, by Clause makand between the said parties to these presents, as sold part far as they respectively are interested; and the said liable for A. B. doth, by these presents, for himself, his heirs. rent.

(f) If the assignment be to a tenant, say, "Except (state the parcels) and also the rent or sum of, &c., a year, parcel of the said rent of, &c., during the continuance of the lease of the said G. H., in the said messuage, &c., called A., (the excepted parcels,) as and for that part or apportionment of the said rent of, &c., which is to be paid, for or in respect of the said messuage, &c., called A." the said messuage, &c., called A.

And in the conveyance of the excepted parcels to another purchaser, say, "All, &cc., (the parcels,) and also the rent or sum of, &c., a year, parcel of the rent or sum of, &c., now payable by the said G. H., for the whole of the said messuage, &c., as and for the apportionment of the said rent to be paid, for or in respect of the said messuage, &c., called A., during the continuance of the estate of the said G. H. therein."

executors, administrators, and assigns, grant, covenant, and declare, to and with the said C. D. and E. F., their heirs and assigns, according to their respective estates and interests in the premises, that the residue of the said messuage and premises comprised in the said indenture of lease, and thereby demised, exclusive of the piece or parcel of land and hereditaments hereby bargained and sold, or otherwise assured, or intended so to be, shall be and be deemed chargeable with the full amount of the rent reserved by the said lease, without any apportionment or diminution of the same rent, for or by reason of the assignment hereinbefore contained; and that the same messuage and hereditaments, with the exception, and exclusively, of the piece or parcel of land and hereditaments hereby bargained and sold, or intended so to be, shall be liable and charged with a distress or distresses for the same rent, in the same manner as if these presents had not been executed, or as if the piece or parcel of land and hereditaments hereby bargained and sold. or otherwise assured, or intended so to be, had not been comprised in the said indenture of lease, any thing hereinbefore contained, or any law or usage to the contrary, in anywise notwithstanding.

(5.)

Consent and Direction that a rent Charge shall henceforth be payable out of Part only of the Lands charged therewith.

Clause makof lands charged therewith.

And the said A. B., by way of agreement, and oharge pay. not of release, doth hereby grant and agree, to and able out of with the said C. D., his heirs and assigns; and the part only said E. F. and G. H. do hereby severally consent, direct, and appoint, that the said rent of, &c., a year, shall henceforth be answered and paid out of the residue of the hereditaments charged with the same, exclusively and by way of exoneration of the close of land and hereditaments hereby released, or otherwise assured, or intended so to be.

OBSERVATIONS AND CASES.

A NET rent is a sum to be paid to the landlord Rent. clear of all deductions. (g) If a person grant Rentcharge. an annual sum to be issuing out of his lands, to another and his heirs for ever, without parting with any property in the lands themselves, it will be no rent, in consequence of there being no render, return, or compensation, and by reason of the grantee having no lands by such grant, out of which to make a return, but by reason of its analogy to the proper rent, it is denominated a rent charge.(h) As a proper rent is a compensation or return for the enjoyment of a particular estate, it follows that when the particular estate determines, the rent must also cease.(i) There can be no rent if the lands or tenements are not derived from another, as anciently, when lands were held in allodio, for a rent necessarily supposes a reception of such lands or tenements from another to whom they primarily belonged, and in whom the ultimate property continues vested. (1) It is said that if the lessor die before sunset on the day whereon rent is demandable, the rent unpaid goes to his heir, but if after sunset, and before midnight, that it shall go to his executor, and not to his next of kin.(k) Rent must be reserved to the grantor or grantors, or one of them, and not to a stranger. (1) If a rent be created by deed, or even as it should seem by parol, it cannot be released without deed at law or in equity.(m)

(h) Watk. Prin. C. 22. (Rents.)

⁽g) Bennett v. Womack, 7 Bern. and Cres. 627. 1 Man. and Ryl. 644. 3 Car. and Payn. 96.

⁽i) Idem.
(j) Idem.
(k) Rockingham v. Penrice, I P. Wms. 177. It appears rent is not strictly demandable before the time of sunset on the day it becomes due, and perhaps not absolutely due till midnight.—Co. Lit. 302. 1 Saund. 287.
(l) Co. Lit. 142. (a.)
(m) Cupit v. Jackson, 1 M'Clel. 495.

Tenant for life.

Parol evidence.

Action for rent.

If a rent charge be granted by tenant for life, and remainder man in fee, a release to either enures for the benefit of the other, but a release to one tenant in common, does not operate for the benefit of his companion.(n) Where a written agreement is not sealed, parol evidence is admissible to show that by the term Lady-day contained therein, that the parties meant Old Lady-day. But parol evidence is not admissible to prove an additional rent payable by a tenant, beyond that expressed in the written agreement for a lease. (o) Where a tenant for life died at nine o'clock at night, on the twenty-ninth of September, it was held that he was not entitled to a quarter's rent due on that day.(p) A landlord may bring his action for his rent, when the distress has not realised the amount due; and it is no answer to an action brought by landlord, that he has distrained goods for it, to the full value of the rent due, when he has sold them for a less sum, because if he has sold them at too low a price, the tenant may have his remedy by action. (q) A landlord cannot maintain an action of covenant for rent against the undertenant. (r) An action of debt may be brought against tenants for lives, for The assignee of a rent may maintain debt for arrears of the rent.(t) A joint tenant may receive the rent and give a discharge, which will be binding on his companions.(u) The survivor of tenants in common may sue for the whole rent, although the reservation be to the lessors, according to their respective interests.(v) If a tenant pays taxes which belonged to the landlord to pay, he should deduct or claim them at the next rent. (w)

⁽n) I Inst. 267. (b.)
(c) Preston v. Merceau, 2 W. Black, 1949.
(p) Norris v. Harrison, 2 Madd. 268.
(q) Efford v. Burgess, 1 Moody and Rob. 23.
(r) Halford v. Hatch, 1 Dougl. 183.
(s) 8 Anne, c. 14, s. 4.
(f) Allen v. Bryan, 5 Barn. and Cres. 512.
(w) Robinson v. Hoffman, 1 Moor. and Payn. 474. 4 Bing. 562. 3 Carr. and Payn. 234.
(v) Wallace v. M'Laren, 1 Mood. and Rob. 516.
(w) Saunderson v. Hanson, 3 Carr. and Payn. 314.

For in a case where the tenant paid his rent without so doing, he could not recover.(x) And so if he neglect to deduct the land tax.(y) tenant make default in payment of the ground rent, and the same is paid by the occupier, it will operate as a discharge of the growing rent, as well as of the rent actually due. (z) Double rent may be recovered (in the same manner as single rent) against a tenant holding over after the expiration of his notice to quit, to be payable during his continuance afterwards in possession.(a) A notice by a tenant to quit upon a contingency, and he does not do so upon the contingency happening, is not liable to an action on the 11th G. 2 for double rent. (b) It appears the statute only applies to those cases where the tenant has the power of determining his tenancy by a notice to quit, and where he has actually given a valid notice sufficient to determine such tenancy.(c) A tenant is liable to double rent by holding over where the landlord gives notice to his tenant to quit, at the expiration of the lease.(d) A tenant for life or years, by holding over after his term has expired, and after demand made of the possession, and notice in writing given for delivering up possession, will be subject to double the yearly value of the premises, to be recovered by action of debt.(e) The statute 4 G. II., c. 28, does not apply to a weekly tenant. (f) The landlord, under this statute, may recover, in debt, double value against his tenant holding over after the expiration of the landlord's notice to quit.(g) But when the tenant holds over after the expiration of his term, he cannot, after recovering in ejectment, maintain his action for double value

⁽x) Andrew v. Hancock, 1 Brod. and Bing. 37. 3 Moore, 278.
(y) Fuller v. Abbott, 4 Taunt, 105.
(z) Carter v. Carter, 5 Bing. 406. 2 Moor. and Payn. 723.
(s) 11 G. II., c. 19, as to double rent being recovered.
(b) Farrance v. Elkington, 2 Camp. 591.
(c) Johnson v, Hudleston, 7 Dow. and Ryl. 411. 4 Barn. and Cres. 922.
(d) Messenger v. Armstrong, 1 T. R. 53.
(e) 4 G. II., c. 28. s. 1.
(f) Lloyd v. Rosebee, 2 Camp. 453.
(g) Soulsby v. Neving, 9 Rast. 310.

under this statute.(h) The marriage of a woman will render it necessary to give notice to the husband previous to bringing action for double value. (i) Although the tenant may have attorned to the administratrix of an executor, it was decreed she must administer previous to bringing the action under this statute.(j) No arrears of rent can be recovered for more than six years.(k)

(h) Wright v. Smith, 5 Rsp. 203.
(i) Lake v. Smith, 1 N. R. 174.
(j) Tingrey v. Brown, 1 Bos. and Pul. 319.
(k) 2 and 3 W. IV., c. 71.

ASSIGNMENTS.

THE operative words in an assignment (1) are, Words not doth assign, transfer, and set over; "(m) but no constitute particular form of words is considered absolutely an assignment. necessary, provided the intention of the parties be

sufficiently explained.

By the statute of frauds (n) it is enacted, that no statute of leases, estates, or interests, either of freehold or frauds. terms of years, or any uncertain interest not being copyhold or customary interest, of, in, to, or out of, any messuages, manors, lands, tenements, or hereditaments, shall be signed, granted, or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting, or surrendering, the same, or their agents thereunto lawfully authorised, by writing, or by act, or operation of law.(o)

Assignments are now generally appropriated to To what asthe transfer of chattels, either real or personal, or are appro-

equitable interests.(p)

To make a man an assignee the legal estate must What noces-be passed, as the mere transfer of an equitable in- an assignee. terest will not be sufficient. (q)

(I) An assignment is defined to be the transfer or setting ever to another of some right, title, or interest, comprising the whole term, estate, and interest, of the assignor.—2 Blk. Com. 326. And is now usually applied to an estate for life, or years, or equitable interests, or to the transfer of chattels, either real or personal.—Watk. Prin. chap. 9. (Assignment.)

(m) In the assignment of chattels, the above words are usually preceded by the words, "bargained and sold."

(n) 29 Chas. II., c. 3, s. 3.

(o) The assignment of a parol lease, otherwise than by deed or note in writing, is void under this statute.—Botting v. Martin, 1 Camp. 318. But an assignment of a lease was held legal under the peculiar circumstances of the case, though neither scaled, delivered, nor stamped.—Beck d. Fry of the case, though neither sealed, delivered, nor stamped.—Beck d. Fry v. Phillips, 5 Burr. 2827. In this last case, the assignment was by endorsement, in these words: "I assign all my title" to, &c., for, &c., which, being a note in writing, was good according to the statute, and did not, prior to the act of 44 G. III., c. 98, require a stamp; but by the stamp

act, 55 G. III., c. 184, a proper assignment stamp is rendered necessary.

(p) 2 Black. 326.

(q) There may be an assignee in deed, and an assignee in the law; he in deed is such a one as to whom a lease, estate, or interest, is assigned; he in law is such to whom the law so maketh without any appointment, as an executor is an assignee in law.—Dyer, fo. 6, n. 5,

The differunderlease.

By an assignment, the whole term is parted with; encebetween but if a part only be transferred, it is not properly ment and an an assignment, but an underlease; so that the distinction between an assignment and an underlease is, where the lessor parts with his whole interest, and where not, as in the latter case, it is an underlease, in the former, an assignment.

Rent suffi-

It is not absolutely requisite that a consideration cient with be expressed in an assignment; for, as the asderation to signee becomes liable to the payment of the rent make an as-signment. reserved by the lease, such liability is a sufficient consideration.

Covenants in an assign-

The covenants in an assignment of leasehold property, on the part of the assignor, usually are, that the indenture of lease is a good, valid, and effectual, lease and demise in the law of the premises; that he has power to assign the same; for the assignee to enter upon and quietly enjoy the premises; and that, free from all incumbrances, except the rents and covenants contained in the indenture of lease, on the tenant's or lessee's part thenceforth to be paid and performed; and for further assurance; and on the part of the assignee, that he will pay the rent, and perform the covenants and agreements in the indenture of lease reserved and contained, and to indemnify the assignor from any breach, neglect, or default, of or in payment, observance, or performance, of the same.

Covenants running with the land.

If there be a covenant which runs with the land, the personal representatives will be liable to the covenants binding those who come in by act of law, as well those by the act of the parties; and, therefore, the executors or administrators of a lessee for years may, like any other assignees, assign the term, and divest themselves of all liability upon the privity of estate, but not upon the privity of contract.(r)

Bankruptcy

Formerly, when a lessee had become bankrupt, and his estate had been transferred to assignees, he was still held liable on his covenant for rent, the

(r) Auriol v. Mills, 4 Term Rep. 94, 1 H. B. 433, Esp. N. P. 201.

assignees not being liable till they had taken possession, although they had accepted the lease; but the bankrupt act of 49 G. III., c. 121, s. 19, provided, that where the assignees accepted the lease, the bankrupt should be discharged from his liability in respect of the rents and covenants, and a short remedy was given by petition to compel the assignees to accept or decline the lease, yet it was then holden that where they declined, the bankrupt was still liable. But in order to remedy the law in this respect, it is enacted, by the 75th section of the new bankrupt act, 6 G. IV., c. 16, that bankrupts entitled Stat 6 G. to leases, or agreements for leases, if the assignees IV., c. 16. accept the same, shall not be liable to pay any rent accruing after the date of the commission, or be sued in respect of any subsequent non-observance or non-performance of the conditions, covenants, or agreements, therein contained; and if the assignees decline the same, shall not be liable in case they deliver up such leases or agreements to the lessor, or person agreeing to grant the leases, within fourteen days after they shall have had notice that the assignees have declined; and if the assignees shall not (upon being thereto required) elect, whether they will accept or decline such leases or agreements, the lessor, or any person entitled under him, may apply by petition to the lord chancellor, who may order them so to elect and deliver up such leases or agreements, in case they decline the same, and the possession of the premises, or may make such other order therein as he shall think fit.(s)

(s) This enactment is similar to the previous one of 49 G. III., which did not extend to a parol agreement for a lease.—Ex parte Sutton, 2 Rose, 86. And is confined to cases between lesser and lessee, and does not ex-

tend to cases between a lessee and his assignee of a lease.—Young v. Taylor, 3 B. & A. 521. Nor does it apply to a contract in its nature not a lease, but for a purchase of property.—Hope v. Booth, 1 B. & Adol. 505.

The usual covenant, not to let, &c., will not prevent a lease from passing to the assignees.—Doe d. Cheere v. Smith, 1 Marsh, 359. 5 Taunt. 795. 2 Rose, 280. And see Doe d. Mitchinson v. Carter, 8 T. R. 57-300. And Lloyd v. Crisp, 5 Taunt. 249. A proviso in a lease that the lessee, his executors or administrators, should not assign without the lessor's consent in writing, did not prevent the commissioners from assigning the lease to the assignees without such consent.—Doe d. Goodbehere v.

Operation of the statute ing bankrupt from lease.

This statute, operating as a total discharge of the in discharg- bankrupt from all the covenants, where the lease contained a covenant that the lessee, his executors covenants in or administrators, without mentioning assigns, should not underlet without the consent of the lessor, the lessee having become bankrupt, and his assignees having assigned the premises to A., who, after the lessee had obtained his certificate, re-assigned the premises to him, after which he underlet them, the court held that, having been discharged from all the covenants, the underletting by him, which was in his character of assignee, was no forfeiture of the lease.(t)

(1.)

Assignment of Lease for the Residue of a Term of twenty-one Years.

Parties.

This indenture made the —— day of, &c., BE-TWEEN the within named A. B., of, &c., of the one part, and C. D., of, &c., of the other part; WHEREAS the said A. B. hath contracted and agreed with the said C. D., for the assignment of the within mentioned lease and hereditaments. for the residue of the within mentioned term of twenty-one years, at or for the sum of, &cc. Now this indenture witnesseth, that, in pursuance of the said agreement, and for and in consideration of the sum of, &c., of lawful money of Great Britain, to the said A. B., in hand, paid by the said C. D., at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he, the said A. B., doth, by these presents, grant, bargain, sell, assign, transfer, and Assignment set over, UNTO the said C. D., his executors, administrators, and assigns, ALL that the messuage, tenement, and all and singular other the premises.

Witnessing part.

Bevan, 3 M. & S. 353. 2 Rose, 456. In cases of bankruptcy the assent of the lessor is presumed in law to have been given to the assignment of the premises by the commissioners.—Wadham v. Marlow, 2 Chit. 600. 4 Doug. 54. 8 East, 314, n. 1 H. Black. 438, n.
(1) Doe d. Cheere v. Smith, 5 Tannt. 795. 1 Marsh, 359. 2 Rose, 280.

in and by the within written indenture of lease demised, or intended so to be, with their, and every of their, appurtenances, and all the estate, right, title, interest, term of years to come and unexpired, property, claim, and demand, whatsoever, of the within named A. B., of, in, to, or out of, the same premises, and every part thereof, together with the said indenture of lease. To HAVE AND Habendum. TO HOLD the said, &c., and all and singular other the premises hereby assigned, or intended so to be, with their, and every of their, appurtenances, unto the said C. D., his executors, administrators, and assigns, from the 25th day of March next ensuing, the date of these presents, for and during all the rest, residue, and remainder, which shall be then to come and unexpired, of the term of twenty-one years, in and by the within written indenture of lease granted of the same, (determinable, nevertheless, at the option of the said C. D., his executors, administrators, and assigns, at the end of the first seven or fourteen years of the term of twenty-one years within granted, upon the said C. D., his executors, administrators, or assigns, giving such notice to the said A. B., his executors, administrators, or assigns, as the said A. B. is required to give, in and by the within written indenture,) subject, nevertheless, subject to to the payment of the rent, and performance of the the payment of the rents. covenants, in the same indenture of lease reserved and contained on the tenant or lessee's part, from thenceforth to be paid, done, and performed; AND Covenants. the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said C. D., his executors, administrators, and assigns, in manner following, (that is to say,) that he, the said C. D., his executors, administrators, or assigns, paying the rent, and observing and performing the covenants and agreements reserved and contained in and by the said within written indenture of lease, on the tenant or lessee's part to be paid and performed, from and after the said day of, &c., shall and may

For quiet enjoyment.

from time to time, and at all times thereafter, for and during all the residue and remainder which shall be then to come and unexpired of the said term of twenty-one years, determinable as aforesaid, by the within written indenture of lease granted lawfully, peaceably, and quietly, have, hold, occupy, possess, and enjoy, the said, &c., and premises hereby assigned, or intended so to be, with their, and every of their, appurtenances, and receive and take the rents, issues, and profits, thereof, and of every part thereof, to and for his and their own use and benefit, without any lawful let, suit, trouble, denial, eviction, or interruption, of or by the said A. B., his executors, administrators, or assigns, or any other person or persons whomsoever, lawfully claiming, or to claim, by, from, or under, him or them, or by, or through, his or their acts, means, neglect, default, or procurement; AND that free and clear, and freely and clearly, acquitted and discharged, or otherwise, by the said C. D., his executors or administrators, well and sufficiently kept harmless and indemnified, of, from, against, all and all manner of incumbrances whatsoever, and of and from all arrears of rent, And for fur-taxes, and assessments, until the said —— day of, &c.; AND further, that he, the said A. B., his executors or administrators, and all every other person and persons having or lawfully claiming, or to claim, any estate, right, title, or interest, of, in, to, or out of, the said, &c., hereby assigned, or intended so to be, upon every reasonable request, and at the costs and charges in the law, of him, the said C. D., his executors, administrators, or assigns, shall and will make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, conveyances, assignments, and assurances, in the law, for the further and better assigning or assuring the said premises unto the said C.D., his executors, administrators, and assigns, for the then residue of the term of twenty-one years,

Free from incumbrances.

ther assur-

ance.

within demised, as by the said C. D., his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonable, devised, and required; AND the said C. D. doth hereby for himself, his covenant by assignee for heirs, executors, administrators, and assigns, cove-payment of nant, promise, and agree, to and with the said performance A. B., his executors, administrators, and assigns, of the cove-that he, the said C. D., his executors, administrators, and assigns, shall and will from time to time, and at all times hereafter, during the continuance of the said term of twenty-one years, (determinable as aforesaid,) pay the said yearly rent of £ ----, by the said within written indenture of lease reserved, as and from the ---- day of, &c., and perform, fulfil, and keep, all and singular the covenants and agreements in the said indenture contained, and which, on the part of the said tenant or lessee, are or ought to be performed, fulfilled and kept; and of and from the same rents, covenants, and agreements, and all costs, charges, damages, and expenses, to be incurred or sustained by reason or on account of any breach, neglect, or default, of or in payment, observance, or performance, of the same respectively as aforesaid, shall and will save harmless, and keep indemnified, the said A. B., his heirs, executors, and administrators, and his and their estate and effects whatsoever and wheresoever. (u) In witness, &c.

(2.)

An Assignment of a Lease for twenty-one Years (by Indorsement) from the personal Representative of the Lessee, in which the Lessor joins as a consenting Party.

This indenture (v) made the —— day of, &c., Parties.

the assignment. (See Bonds.)
(v) This precedent may begin by way of deed poll, thus: "Know all men," &cc.; but it is the better way in all cases to effect the deed by way of indenture, as all the parties will appear in the first instance by whom the same is made between.

⁽s) A bond should be entered into by the assignee to indemnify the leseee against payment of the rent, and the performance of the covenants in the lease, (he being still liable,) or the lessee should have a duplicate of

BETWEEN A. B., of, &c., (administrator of all and singular the goods, chattels, rights, and credits, of

the within named C. D., (the lessee,) deceased,) of the first part; the within named E. F., (the lessor,) of the second part; and G. H., of, &c., (the as-Witnesseth. signee,) the third part; WITNESSETH, that for and in consideration of the sum of £ ----, of lawful money, &c., by the said G. H., to the said A. B., in hand, well and truly paid, at or before the sealing and delivery of these presents, the receipt whereof he, the said A. B., doth hereby acknowledge, and of and from the same, and every part thereof, doth acquit, release, and discharge, the said G. H., his executors, administrators, and assigns, by these presents; he, the said A. B. (by and with the consent and approbation of the said E. F., testified by his being a party hereto, and executing hereof) потн, by these presents, bargain, sell, assign, transfer, and set over, unto the said G. H., his executors, administrators, and assigns, ALL that messuage, farm, and lands, with the hereditaments and premises, comprised in the within written indenture, and therein mentioned, to be thereby demised, with their, and every of their, appurtenances, together with the within written indenture of lease; AND all the estate, right, title, and interest, which he, the said A. B., now hath, or at any time hereafter shall or may have, claim, or demand of, in, or to, the said hereditaments and premises, or any part thereof, by virtue of the said indenture of lease, or otherwise, as the administrator of the said C. D., deceased;

> singular other the premises, with their, and every of their, appurtenances, unto the said G. H., his executors, administrators, and assigns, for and during all the rest, residue, and remainder, yet to come and unexpired, of the within mentioned term of twenty-one years, in as full, ample, and beneficial, a manner, to all intents and purposes whatsoever, as he, the said A. B., his executors, or administrators, might or could in any manner have held and enjoyed

Operative part.

Parcels.

Habendum. TO HAVE AND TO HOLD the said, &c., and all and

the same, if these presents had not been made, subject, nevertheless, to the yearly rent of £70, in and by the said indenture of lease reserved and contained, and to become due and payable, and to all and every the covenants, clauses, provisoes, and agreements, therein contained; AND the said A. B. Covenant by doth hereby for himself, his executors and adminis- has done no trators, covenant and declare, to and with the said act to encumber. G. H., his executors, administrators, and assigns, that he, the said A. B., hath not made, done, or committed, any act, deed, matter, or thing, whatsoever, whereby the said hereditaments may be in any manner encumbered. (w) In witness, &c.

(3.)

Assignment of a Lease with household Goods from an Administrator, and others the next of Kin of the Deceased to Trustees in Trust for their mutual Benefit.

This indenture made the —— day of, &c., BE- Parties. TWEEN S. F., of, &c., gentleman, (administrator of the personal estate and effects of D. F., late of, &c., yeoman, deceased, who lately departed this life intestate,) of the first part; M. F., of, &c., (widow and relict of the said D. F., deceased,) and T. F., of, &c., the other brother of the said D. F., (which said M. F., S. F., and T. F., are the only next of kin of the said D. F.,) of the second part; and R. S., of, &c., T. G., of, &c., of the third part; WHEREAS, Recital of by indenture of lease bearing date the, &c., and original lease. expressed to be made between G. F., of, &c.,

(x) If the representative of the lessee be entitled to the residuary estate, Further asadd a covenant for further assurance, thus: "And moreover, that he, the surance.
said A. B., his executors and administrators, and all persons whosoever
claiming through or in trust for him, shall and will, at the request and
charges of the said G. H., his executors, administrators, and assigns, make
and perfect all further assignments and assurances that may be necessary
for the more effectually assigning the said hereditaments with the approximate and perfect all further assignments and assurances that may be necessary for the more effectually assigning the said hereditaments, with the appurtenences unto the said G. H., his executors, administrators, and assigns, for the residue of the said term of twenty-one years, according to the true intent and meaning of these presents, as by the said G. H., his executors, administrators, and assigns, or his or their council in the law, shall be devised and tendered to be executed." (The usual indemnity (as in p. 157) should be added here, in case the lessor is not a consenting party.—See Staines v. Morris, 1 Ves. and Bea. 10.)

esquire, of the one part, and the said D. F., of the other part, for the considerations therein mentioned, the said G. F. did grant and demise, unto the said D. F., ALL that cottage or tenement, with the garden, buildings, lands, hereditaments, and premises, situated, &c., with the rights, member, and appurtenances, thereunto belonging; TO HOLD the same unto the said D. F., his executors, administrators, and assigns, from, &c., for and during the term of ninety-nine years, at and under the yearly rent of £ —, payable to the said G. F., as therein mentioned, and also subject to the covenants and agreements therein contained, on the part of the said D. F., his executors, administrators, Recital of and assigns, to be performed and kept; AND the death of WHEREAS, the said D. F. lately departed this life intestate, leaving the said M. F., his widow and relict, and the said S. F. and T. F., his two brothers, And letters and only next of kin; and since the decease of the said D. F., letters of administration of his personal estate and effects have been duly granted to the said S. F. by the ecclesiastical court of the bishop And by the of H.; AND WHEREAS, by virtue of the statute of distribution distribution of intestate's estates, the said M. F. is the wife en- entitled to one moiety, or half part, of the personal titled to one moiety, and estate and effects of the said D. F., her late husband, his two brothers to and the said S. F. and T. F., parties hereto, his the other two brothers, are entitled to the remaining moiety, or half part thereof, in equal shares; AND WHEREAS, and agree. it hath been proposed and agreed, by and between ment of par- the said M. F., S. F., and T. F., parties hereto, widow shall that the said M. F. shall have and be entitled have the cottage, &c., to the possession, and occupy, of the said cottage for her life, or tenement, garden, hereditaments, and premises, in lieu of her in lieu of her comprised in the said recited indenture of lease as aforesaid, and the receipt of the rents and profits, and also to the use and enjoyment of the household goods and furniture mentioned in the schedule hereunder written, being also part of the personal estate and effects of the said D. F., for and during her natural life, in satisfaction of her distribution, and

the lessee.

tration granted to S. F. his widow. statute of Proposal ties that

all other her right, share, and interest, therein; and And after that in consideration thereof, all and singular the before then to the mentioned premises shall from and after her decease two surviv-be and become the absolute estate and property of them, the said last mentioned S. F. and T. F. Now THIS INDENTURE WITNESSETH, that, in pur- Witnessing suant of the same agreement, and in consideration clause of assignment of of ten shillings of lawful money of Great Britain, to lease. the said S. F., M. F., and T. F., in and paid by the said R. S. and T. G., upon or before sealing and delivering of these presents, the receipt whereof is hereby acknowledged, he, the said S. F., at the request, and by the direction, of the said M. F. and T. F., signified by their respectively being parties to and executing these presents; and also, the said Operative M. F. and T. F. do, and of every of them doth, by part. these presents, grant, bargain, sell, assign, transfer, and set over, unto the said R. S. and T. G., their executors, administrators, and assigns, ALL and Parcels. singular the said cottage or tenement, garden, building lands, hereditaments, and premises, hereinbefore described, and which in and by the said indenture were granted and demised unto the said D. F., his executors, administrators, and assigns, as aforesaid, and all the estate, right, title, interest, term and terms of years yet to come and unexpired, right and benefit of renewal, property, possession, claim, and demand, whatsoever, as well legal as equitable, of them, the said S. F., M. F., and T. F., every or each and every of them, of, in, to, or out of, the same premises; TO HAVE AND TO HOLD the Habendum said cottage or tenement, garden, buildings, lands, trustees. hereditaments, and premises, hereinbefore mentioned, to be hereby assigned unto the said R. S. and T. G., their executors, administrators, and assigns, for and during all the residue and remainder of the said term of ninety-nine years, thereof granted and demised as aforesaid, subject, nevertheless, to the said yearly rent of, &c., in and by the said in part recited indenture of lease, reserved and made payable as aforesaid, and to the covenants and agree-

ments therein contained, on the lessee or assignee's

Further are assigned and afterwards to brothers of deceased_ Goods.

Trusts.

ther assurance.

part and behalf to be done and performed, upon the trusts following, (that is to say,) in trust for the said M. F. and her assigns, for and during the term of her natural life, and from and after her decease, in trust for the said S. F. and T. F., as tenants in common, their respective executors, administrators, and assigns; AND THIS INDENTURE FURTHER WITwitnessing part where NESSETH, that for the consideration aforesaid, he, by the goods the said S. F., at the request and by the direction are assigned of the said M. F. and T. F., signified as aforesaid; wife for life, and also they, the said M. F. and T. F., do, and each and every of them doth, by these presents, grant, bargain, sell, and assign, unto the said (trustees), their executors, administrators, and assigns, ALL and every the household goods, furniture, and effects, therein mentioned, and specified in the said schedule hereunder written, all benefit and advantage thereof; TO HAVE AND TO HOLD the said premises lastly herebefore mentioned to be assigned unto the said (trustees), their executors, administrators, and assigns, in trust, to permit and suffer the said M. F. to have the use and enjoyment thereof, for and during the term of her natural life, and from and after her decease, in trust for the said S. F. and T. F., as tenants in common, their respective Covenant by executors, administrators, and assigns; AND the each for fur-said S. F., M. F., and T. F., separately and apart, each for himself, and his and her respective heirs, executors, administrators, and assigns, not jointly, nor the one for the other of them, nor for the heirs, executors, administrators, and assigns, of the others or other of them, but each of them for his and her own acts only do hereby covenant, promise, and agree, to and with the said R. S. and T. G., their executors, administrators, and assigns, that they, the said S. F., M. F., and T. F., and their respective executors and administrators, shall and will from time to time, and at times hereafter, upon every reasonable request for that purpose, but at the expense of the person or persons requesting the same.

make, do, and execute, or cause, or procure to be made, done, and executed, all such further and other lawful and reasonable act and acts, deeds, assignments, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely, assigning and assuring of the said premises, mentioned and intended to hereby assigned respectively as aforesaid, with the appurtenances, unto the said R. S. and T. G., the executors, administrators, and assigns, upon the trusts, and to and for the intents and purposes, hereinbefore expressed or declared, of or concerning the same, as by the said R. S. and T. G., or the survivor of them, his executors, administrators, or assigns, or his or their council in the law, shall be reasonably devised or required. In witness, &c.

Schedule of the household furniture above referred to.

(4.)

Assignment of Lease, and Policy of Insurance.

This indenture made, &c., Between A. B., of, Parties. &c., of the one part, and C. D., of, &c., of the other part; whereas by an indenture dated, &c., and Region of expressed to be made between, &c., for the consi- original lease. deration therein mentioned, the said (lessor) did demise unto the said, &c., his executors, administrators, and assigns, ALL, &c., to hold the same unto the said, &c., from, &c., for the term of, &c., at and under the yearly rent(x) of, &c., and subject to the covenants, conditions, and agreements, which in and by the said indenture of lease are expressed, declared, and contained; AND WHEREAS, by divers That by dimesne assignments and assurances in the law, and wers mesne eventually by an indenture of assignment dated,

⁽x) Or thus: "At and under the clear yearly rent of \mathcal{L} —, to be paid by four equal quarterly payments, and with, under, and subject to, the several covenants, provisoes, conditions, and agreements, in the same indenture contained, and on the part of the lesses to be observed, performed, und kept.

Agreement for contract.

Testatum clause.

Operative part,

Habendum.

&c., the said messuage and premises became vested in the said C. D., for the residue of the said term, which was then to come and unexpired, under and subject, &c.; AND WHEREAS, the said A. B. hath contracted with the said C. D. for the sale to him of the said messuage and premises comprised in the said in part recited indenture of lease, for the residue of the said term of —— years, at or for the price of, &c. (y) Now this indenture witness-ETH, that, in pursuance of the said agreement, and in consideration of the sum of £ —, of lawful money of Great Britain, to him, the said A. B., in hand, paid by the said C. D., at or before the execution of these presents, the receipt whereof he, the said A. B., doth hereby acknowledge, and from the same, and every part thereof, doth acquit, release, and discharge, the said C. D., his executors, administrators, and assigns, by these presents; he, the said A. B., doth, by these presents, grant, bargain, sell, assign, transfer, and set over, unto the said C. D., his executors, administrators, and assigns, ALL that the said messuage, &c., and all and singular other the premises comprised in the said in part recited indenture of lease, with their, and every of their, appurtenances, together with the same indenture, and all the estate, right, title, interest, term and terms of years to come and unexpired, trust, property, possession, claim, and demand, whatsoever, both at law and equity, of him, the said A. B., of, in, to, and out of, the said messuage, hereditaments, and premises; TO HAVE AND TO HOLD the said messuage, &c., and other the premises hereby assigned, or intended so to be, with their, and every of their, appurtenances, unto the said C. D., his executors, administrators, and assigns, henceforth for and during all the rest and residue, now to come and unexpired, of the said term of —— years, subject to the rent, covenants,

(y) If a licence from the lessor must be first obtained for the recital, see the head "Recitals." Such licence should be had and procured at the assignor's expense.—Lloyd v. Crisp, 5 Taunt. 249. (See "Licences.")

conditions, and agreements, in the said in part recited indenture of lease reserved and contained, which, on the tenant's or lessee's part, ought to be paid, observed, performed, and kept; AND the said Covenants. A. B. doth hereby for himself, his executors, administrators, and assigns, covenant, promise, and agree, with and to the said C. D., his executors, administrators, and assigns, in manner following, (that is to say,) that the rents, covenants, condi-That rents tions, and agreements, in the said in part recited have been paid, and indenture of lease reserved and contained, have covenants been duly paid, observed, performed and kept, up performed. to the --- day of, &c., last past; AND in that (for That lease is and notwithstanding any act, deed, matter, or thing, whatsoever, by him, the said A. B., made, done, or knowingly, or willingly, suffered to the contrary) the said hereinbefore in part recited indenture of lease is, at the time of the sealing and delivery of these presents, a good, valid, and subsisting lease and demise in the law, and not forfeited, surrendered, or become void, or voidable; AND that (for and notwithstanding any such act, Good right deed, matter, or thing, as aforesaid) he, the said to assigu. A. B., now hath in himself good right, full power, and absolute authority, to assign and assure the said messuage and premises hereby assigned, or intended so to be, for and during all the residue and remainder, now to come and unexpired, of the said term of ---- years, in manner aforesaid, according to the true intent and meaning of these presents; AND further, that it shall and may be lawful to and To peace-for the said C. D., his executors, administrators, and enjoy. and assigns, from time to time, and at all times hereafter, during the said term of - years, peaceable and quietly to enter upon, have, hold, occupy, possess, and enjoy, the same messuage and premises, with their appurtenances, and to receive and take the rents, issues, and profits, thereof, to and for his and their own use and benefit, without any lawful let, suit, trouble, denial, eviction, interruption, claim, or demand, of or by him, the said

Free from incumbrances.

ther assur-

апое.

A. B., his executors or administrators, or any person or persons lawfully or equitably claiming, or to claim, by, from, under, or in trust for him, them, or any of them; AND that free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise, by the said A. B., his executors or administrators, well and sufficiently saved, defended, and kept harmless, and indemnified, of, from, and against, all and all manner of former estates, titles, troubles, charges, and incumbrances, whatsoever, either already or to be hereafter made, done, committed, or suffered, by the said C. D., his executors or administrators, or by any person or persons lawfully claiming, or to claim, by, from, under, or in trust for, him, them, or any of them; (save and except the rents, covenants, conditions, and agreements, in and by the said hereinbefore recited indenture of lease reserved and contained, and which on the tenant's or lessee's part are or ought to be observed and performed;) And for fur- AND further, that the said A. B., his executors and administrators, and all other person or persons having or claiming, or who shall or may have or claim, any estate, right, title, interest, property, or demand, whatsoever, either at law or in equity, of, in, to, or out of, the said messuage or tenement and premises hereby assigned, or intended so to be, or any of them, or any part thereof, by, from, under, or in trust for, the said A. B., his executors or administrators, shall and will from time to time, and at all times, during the said term of —— years, at the request and proper costs and charges of the said C. D., his executors, administrators, and assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further, and other lawful, and reasonable, acts, deeds, assignments, and assurances in the law, whatsoever, for the better, more perfectly, and absolutely, assigning and assuring of the said messuage, &c., for the remainder, then to come and unexpired, of the said term of —— years, as by the said A. B., his

executors or administrators, or his or their counsel in the law, shall be reasonable, advised, devised, and required; AND the said C. D. doth hereby for Assignee co-himself, his heirs, executors, administrators, and pay rent and assigns, covenant, promise, and agree, to and with perform covenants. the said A. B., his executors and administrators, that he, the said C. D., his heirs, executors, administrators, and assigns, shall and will from time to time, and all times hereafter, during the said term of — years, granted by the said in part recited indenture of lease, well and truly pay, or cause to be paid, the yearly rent, in and by the same indenture of lease reserved, which henceforth shall grow due and payable, in respect of the said premises hereby assigned, at such times, and in such manner, as the same is thereby reserved; and also shall and will observe, perform, and keep, all and singular the covenants, conditions, and agreements, in the said indenture of lease contained, and which henceforth on the tenant or lessee's part ought to be paid, observed, performed, and kept; AND shall and will And to indemnify the from time to time, and at all times hereafter, save, assignor defend, keep harmless, and indemnified, the said therefrom. A. B., his heirs, executors, and administrators, and his and their lands and tenements, goods, and chattels, from and against the payment of the said rent, and the performance of the said covenants, conditions, and agreements, therein contained, and from and against all manner of actions, suits, cause and causes of actions and suits, costs, charges, damages, claims, and demands, whatsoever, for or on account of the same, or in anywise relating thereto. (z)

⁽z) Although the vendor, as an assignee merely, may not be liable to the performance of the original covenants.—Taylor v. Shum, 1 B. & P. 21 (see note to p. 152). Onslow v. Corrie, 2 Madd. 330; and for which reason it has been held he cannot require an indemnity from the purchaser;) yet this covenant of indemnity is necessary to be revived where the assignor has entered into such covenant on his taking his assignment, in order to afford him a protection therefrom. In the case of Staines v. Morris, Lord Eldon remarked, that there never was an instance of an assignment drawn with proper caution which did not contain such a covenant.— See 1 Ves. and Beam. 10. (It seems unless such indemnity has been entered into by the vendor when he purchased, he cannot require it from his purchaser.—Wilkins v. Fry, 1 Mer. 244. S. C. Rose, 370.)

policy of in-SUPEDOS.

Recital of a AND WHEREAS, by a certain deed poll in writing dated, &c., purporting to be a policy of insurance, under the hands and seals of three of the directors of the company of the —— Insurance Office, the said A. B. hath insured the said premises against damage by fire in the sum of, &c.; and it hath been agreed that the said policy shall be assigned to the Assignment said C. D. in manner hereinafter mentioned. Now of policy of insurance. This indenture further witnesseth that in

Power of attorney.

pursuance of the said last mentioned agreement, and in consideration of the premises, he, the said A. B., doth, by these presents, grant, bargain, sell, and assign, all that deed poll, or policy of insurance, dated, &c., and numbered, &c., and under the hands and seals of three of the directors of the said insurance office, and all the right and interest of Habendum. him, the said A. B., in and to the same; TO HAVE, hold, receive, and take, the said policy of assurance, and all and every the sum and sums of money which shall or may become due and payable thereupon, or by virtue thereof, and all other benefit and advantage whatsoever, which shall or may accrue from or in respect of the same, unto and by the said C. D., his executors, administrators, and assigns, to and for his and their own proper use and benefit, free and clear of and from all and all manner of charges, liens, and incumbrances, whatsoever; AND the said A. B. doth hereby nominate, constitute, and appoint, the said C. D., his executors, administrators, and assigns, his true and lawful attorney and attorneys, to demand, recover, and receive, all such sum and sums of money as aforesaid, in as full and ample a manner as he, the said A. B., could or might have done if these presents had not been made. (a) In witness, &c.

⁽a) A covenant may be added, that he, the assignor, hath done no act, matter, or thing, whereby the said policy of insurance are, is, can, shall, or may be, charged or encumbered in any manner howsoever; and that he, the said (assignor), whilst the said sum remains insured as aforesaid, will at any time hereafter do any further act for the better assigning the policy of insurance, money, and premises.

MISCELLANEOUS FORMS.

(1.)

Assignment of a Lease for twenty-one Years sold by Auction.(b)

THIS indenture made, &c., BETWEEN A. B., of, Parties. &c., of the one part, and C. D., of, &c., of the other part; whereas, by an indenture of lease bearing Recital of date, &c., and made between, &c., all those, &c., the lease. (describe the parcels as in the original lease, omitting the general words,) with their appurtenances, were demised to the said A. B. for the term of twenty-one years, at and under the yearly rent of, &c., and subject to the covenants, &c., therein contained, &c.; (c) AND WHEREAS, all the estate, right, sale by aucand interest, of the said A. B., in the said messuage, tion. hereditaments, and premises, in, by, and under, the said recited indenture of lease, were put up to sale by public auction, at, &c., on the —— day of, &c., now last past, when the said C. D. was declared to be the highest bidder or purchaser thereof, being the lot No. - in the printed particulars of sale thereof, at the sum of £ ____, and thereupon paid into the hands of the auctioneer at such sale the sum of £ ----, by way of deposit, and in part of Deposit paid the said purchase money, conformable to the conditions of sale contained in the said printed particulars there exhibited.(d) Now this Indenture witness.

⁽b) See conditions of sale.—Post. (c) If it be a term determinable on lives, state the words of the lease, such as, "determinable on the lives of E. F., G. H., and J. K., hereinafter named, who are now all living;" and if there are other mesne assignments, &c., say, "And whereas, by divers mesne assignments, and other operations are assignments, and other operations are assigned to a specific living and eventually under and by richard of a specific living and eventually under and by richard of a specific living and eventually under and by richard of a specific living and eventually under and by richard of a specific living and eventually under and by richard of a specific living and eventually under and by richard of a specific living and a specific living a specific living a specific living and a specific living a specific living and a specific living a specific living and a specific living a specific livi tions, good and available in law, and eventually under and by virtue of an indenture dated the, &c., and expressed to be made between, &c., the said messuage and hereditaments, comprised in the said recited indenture of lease, were assigned and conveyed to the said A. B., for all the rest and residue of the said term of, &c., (determinable as aforesaid,) then to come and unexpired, subject," &c.

(d) If the sale be not by auction, the contract may be recited

Consideration_

Parcels.

WITNESSETH, that in pursuance of the said contract by public auction, and in consideration of the said sum of \mathcal{L} —, paid by way of deposit, and in part of the said purchase money, or sum of £ ---, and also in consideration of the sum of £ --- in hand, paid to the said A. B., by the said C. D., at or before the sealing and delivery of these presents, the receipt whereof the said A. B. doth hereby acknowledge; (which said two sums, £ — and \pounds —, amount in the whole to the said purchase money or sum of £ ---;) and from which and every part thereof, he, the said A. B., doth acquit, release, and discharge, the said A. B., his executors and administrators, by these presents; he, the said A. B., doth hereby grant, bargain, sell, assign, and set over, unto the said C. D., his executors, administrators, and assigns, ALL the said messuage, lands, hereditaments, and premises, comprised in said indenture of lease, with their appurtenances, and all the estate, &c., and the said indenture of lease of the said —— day of, &c., and all other deeds, evidences, and writings, in the custody or possession of the said A. B., or which he can ob-Habendum. tain without suit at law or in equity; TO HAVE AND TO HOLD the said, &c., hereditaments and premises hereinbefore described and expressed to be hereby assigned, with all and singular their appurtenances, for and during all the rest and residue, now to come and unexpired, of the said term of twenty-one years, so created by the said indenture of lease as aforesaid, nevertheless under and subject to the rent, &c., and to the covenants, &c., contained in the said indenture of lease, &c.(e) (Add covenants, (that notwithstanding, &c.) the lease is valid, and

Covenants for title.

> shortly, thus: "And whereas, the said A. B. hath contracted to sell the same premises for the residue of the said term, and all his right and interest therein, to the said C. D., in consideration of the sum of £.

⁽e) Or thus, if determinable on lives: "To have and to hold, &c., for the remainder of the said term of —— years, granted by the said recited indenture of, &c., yet to come and unexpired, if the said E. F., G. H., and J. K., or the survivor of them, shall so long live, subject, nevertheless, to the payment of the rent, and observance of the covenants and agreements in the same indenture contained, and on the lessee's part to be paid, observed, and performed."

(that notwithstanding, &c., as aforesaid) that the said A. B. has good right to assign; and for peaceable possession; free from incumbrances; and for further assurance; and further, "that Rents have the rent in and by the said recited indenture of been paid. lease reserved, and the covenants, conditions, and agreements, therein contained, and on the lessee's part to be paid, kept, observed, and performed, and all taxes, rates, and assessments, due and payable by the occupier of the said premises, are and have been well and truly paid, kept, done, performed, and fulfilled, up to the - day of — last;"(f) and add the usual covenant by Covenant by the assignee to pay the rents, and perform the payrent, and covenants, and to indemnify the lessee there- to indemnify vendor. from.)(g) In witness, &c.

(2.)

Assignment of Leaseholds for Lives (h) from Landlord to a Tenant in Possession.

THIS indenture made the —— day of, &c., BR- Parties. TWEEN A. B., of, &c., of the one part, and C. D.,

(f) Where part of the premises are only assigned, and the assignor re- Covenant tains the original lease, the following concise form of covenant, for produc- for the protion of the same, may be added: "And also, that he, the said A. B., his duction of executors, administrators, or assigns, shall and will from time to time, on lease. the request, and at the costs and charges, of the said C. D., his executors, administrators, and assigns, (unless hindered or prevented by fire, or other inevitable accident.) produce, or cause to be produced, to the said C. D., his executors, administrators, or assigns, or his or their solicitor, agent, or council, at or before any courts of law or equity in England, or commissioners, for the examination of witnesses; and also, give and deliver, and permit to be examined, attested, or unattested, copies of the said recited indenture of lease of the —— day of, &c." (If other mesne assignments, say, "Of all, any, or either, of the deeds, papers, and writings, mentioned or specified in the schedule hereunder written, or hereunto annexed, or any or either of them.") For a more comprehensive form of covenant for production of lease, &c., see the head "Covenants."

(g) For the covenants as to title, see form No. 4, p. 163.
(h) In conveying leaseholds for lives, the subsisting lease must be reor to a trustee, or mortgagee, some notice must be taken of the interleaseholds for lives.

The substitute interleaseholds for lives. latter, and can be given up to the purchaser, it may be sufficient to state after this manner, instead of reciting such intermediate deeds. "And whereas, by virtue of divers conveyances and assignments in the law, the hereditaments comprised in the said lease have become vested in the said (rendor), for and during the natural lives of, &c., (the celles que vies,) and

Recital of lease.

of, &c., of the other part; WHEREAS, under and by virtue of an indenture dated. &c., and expressed to be made between, &c., for the considerations therein mentioned, ALL, &c., were demised unto the said A. B., his heirs and assigns, during the natural lives of, &c., and the life of the longest liver of them, at and under the yearly rent of, &c., payable at the days, and times, and in manner therein mentioned, and subject to the covenants and agreements in the said indenture of lease contained, on the part of the lessee, his heirs and assigns, to be paid, done, and performed; AND WHEREAS, the said A. B. hath contracted with the said C. D. for the sale to him of the leasehold messuage, &c., hereinafter described, with the appurtenances, for and during the natural lives of, &c., and the longest liver of them, for the sum of, &c. Now this indenture witnesseth, that for carrying the said contract into effect, and in consideration of the sum of, &c., of lawful money of Great Britain, by the said C. D., to the said

Contract.

Testetum clause.

the longest liver of them, and for and during all other the estate, term, and interest, of the said (vendor) therein."

The premises must be conveyed by the same words as lands held in fee simple, and the parcels may be described either by a reference to the recited lease, or the description therein may be repeated, according to circumstances; but it must be closely adhered to. The habendum should be to the purchaser, his heirs and assigns, for and during the natural lives of, &cc.; (and here may be added, but the same is not necessary;) "To the use of the said (purchaser), his heirs and assigns, for and during the natural lives of," &cc.

The conveyance must be made subject to the payment of the rents, and the performance of the covenants in the lease. If a married woman has an interest, the conveyance must be acknowledged pursuant to the statute 3 and 4 W. IV., c. 74. In respect to the covenants, the vendor must covenant that notwithstanding any act, &c., by him, the lease is valid; that he hath power to convey for and during the natural lives of, &c., (the celles que vies); for peaceable enjoyment; and that, free from incumbrance, except the rent, and the covenants in the lease contained. And for further assurance, the usual covenant by the purchaser to pay the rent, &c., should also be inserted, with the indemnity to the vendor against payment of such rent, or performance of the covenants in the said lease.—(See p. 163, form 4.)

Leaseholds for lives may be conveyed by feoffment, or bargain and sale

enrolled, as well as by lease and release, and they may also be demised for a term, determinable on the death of the ultimate survivor of three lives named in the lease; but if it should be surrendered by the lessor, the term would be at an end. As to the devise of estates pur surre vie, and the descent of the same, see note (c) to p. 6. Leaseholds for lives, not being an estate of inheritance, are not subject to dower, nor to a tenancy by the curtesy. If leaseholds for lives be conveyed or devised to a person, his executors, administrators, and assigns, it will be considered as personal

estate in him, and go to his executors.

A. B., paid at the time of the execution of these presents, the receipt whereof he, the said A. B., doth hereby acknowledge, &c.; he, the said A. B., DOTH, by these presents, grant, bargain, sell, assign, alien, and release, unto the said C. D., (in his actual possession, now being by virtue of a demise made to him by the said A. B., by indenture, bearing date, &c., for the term of seven years, from the day of the date of the same indenture, if the said, &c., should so long live, and by force of an entry made by the said C. D., pursuant to the same indenture,) ALL, &c., Parcels, and together with all and singular outhouses, &c., and words. all the estate, right, title, interest, property, claim, and demand, whatsoever, of him, the said A. B., in and to the same hereditaments; TO HAVE AND TO Habendum. HOLD the said messuage, &c., and all and singular other the premises hereby granted and released unto the said C. D., his heirs and assigns, for and during the lives of the said, &c., and the longest liver of them, at and under the said yearly rent of, &c., and subject to the covenants and agreements in the said recited indenture of lease of, &c., contained, on the part of the lessee or assignee to be paid, done, and performed; AND the said A. B. Covenants. doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said C. D., his heirs, executors, administrators, and assigns, in manner following, (that is to say,) that the yearly rent, and the That rent covenants reserved and contained in the said in part has been recited indenture of lease, on the part of the said lessee to be paid, kept, done, and performed, and all taxes, rates, and assessments, due and payable by the occupier of the said premises, are and have been well and truly paid, kept, done, performed, and fulfilled, up to the day of the date of these presents; AND that for and notwithstanding any That lease is act, deed, matter, or thing, whatsoever, by the said valid. A. B., made, done, committed, or executed, to the contrary, the said indenture of lease is a good,

Good right to assign.

To peaceably enjoy.

Free from incumbrances.

ther assurance.

valid, and subsisting lease, in the law, of and for the said, &c., hereby granted and demised, and in nowise forfeited, surrendered, or made void or voidable; AND that (for and notwithstanding any such act, deed, matter, or thing, as aforesaid) he, the said A. B., now hath in himself good right to grant, release, and convey, the said messuage and hereditaments hereby released, with the appurtenances, unto the said C. D., his heirs and assigns, for and during the lives of the said, &c., and the longest liver of them, according to the true intent and meaning of these presents; AND also, that it shall and may be lawful, to and for the said C. D., his heirs and assigns, immediately after the execution of these presents, to enter upon and enjoy the said messuage and hereditaments hereby released, with the appurtenances, for and during, &c., and to receive and take the rents and profits thereof, for his and their own use and benefit, without any interruption whatsoever, from or by the said A. B., or his heirs, or any person claiming through or in trust for him, subject, nevertheless, to the payment of the rent and performance of the covenants in the said recited lease reserved and contained; AND that free and clear, or otherwise, by the said A. B., his heirs, executors, or administrators, well and sufficiently indemnified of, from, and against, all estates, titles, troubles, liens, charges, and incumbrances, whatsoever, made, done, or permitted, by the said A. B., or any person claiming through or in trust And for fur- for him; AND moreover, that he, the said A. B., and his heirs, and all persons whosoever, claiming through or in trust for him, shall and will, at the request, costs, and charges, of the said C. D., his heirs and assigns, during the continuance of the said lease, make and perfect all further assurances that may be necessary for the more effectually or satisfactorily conveying the said messuage and hereditaments hereby released, with the appurtenances, unto the said C. D., his heirs and assigns, for and during the natural lives of, &c., and the longest liver of them, according to the true intent and meaning of these presents, as by the said C. D., his heirs or assigns, or his or their counsel in the law, shall be devised, and tendered to be executed; AND the said C. D. doth hereby Covenant by for himself, his heirs, executors, administrators, pay rent, &c. and assigns, covenant, promise, and agree, to and with the said A. B., his heirs, &c., (here add the usual covenant by purchaser for payment of rent, and performance of covenants, "during the continuance of the demise;" and add the usual covenant of indemnity by purchaser to vendor, his heirs, &c., against the rents and performance of covenants,) (see p. 157 and 167.) In witness, &c.

(3.)

Assignment of leasehold Premises in Trust to sell, and for dividing the purchase Money among the Parties in Dispute, pursuant to an Award to be made by an Arbitrator.(i)

This indenture made the — day of, &c., BE- Parties. TWEEN A. B., of, &c., of the first part; C. D., of, &c., of the second part; E. F., of, &c., of the third part; and (trustee), of the fourth part; WHEREAS, &c., (recite the title to the premises); AND Recital of WHEREAS, divers disputes and controversies have disputes depending. arisen between and amongst the said A. B., C. D., and E. F., concerning their respective claims to, and interest in, the said leasehold premises hereinafter particularly described, and such matters in dispute have been referred by them to the award and determination of J. K., as the arbitrator chosen by the said parties; AND WHEREAS, the said J. K., for the more effectually carrying on of such arbitra-

(i) Matters in realty may be submitted as the claims and pretensions of the parties; but a right of real property cannot pass by mere award; but the arbitrator may award a conveyance or release of land, or that one party shall give a bond to the other for quiet enjoyment, or shall release to the other, and the like.—See Marks v. Marriott, 1 Ld. Raymond, 115. 3 Blk. Com. 16.

tion, and for making such his award, has deemed

Testatum clause.

Parcels.

it expedient that the said leasehold premises should be assigned and conveyed to the said (trustee), for the residue of the said term, for the purposes hereinafter declared. Now this inden-TURE WITNESSETH, that in pursuance of the said proposal, and to the end, intent, and purpose, that the said trustee may make sale and dispose of the said leasehold premises; and in consideration of the sum of five shillings of, &c., to each of them, the said A. B., C, D., and E. F., in hand, well and truly paid by the said (trustee), at, &c., and for divers other good causes and considerations them hereunto moving, they, the said A. B., C. D., and E. F., Do, and each and every of them, (according to their respective estates, rights, and interests, in the said premises,) DOTH grant, bargain, sell, assign, transfer, and set over, unto the said (trustee,) his executors, administrators, and assigns, ALL, &c., (describe the premises,) comprised by the said recited indenture of lease, (or, if the lease be not recited, say, comprised in the original indenture of lease of, &c., by which the same were granted and demised, &c.,)(1) with their, and every of their, rights, members, and appurtenances, and all the estate, right, title, interest, term and terms of years yet to come and unexpired, possession, property, claim, and demand, whatsoever, both at law and in equity, of them, the said A. B., C. D. and E. F., in or to the said hereditaments and premises, together with all deeds, evidences, and writings, relating to the said demised premises, or any part thereof, now in the custody or power of the said A. B., C. D., and Habendum. E. F., or any or either of them; TO HAVE AND TO HOLD the said, &c., and all and singular other the premises hereby assigned, or intended so to be,

> (j) Or thus, when the lease and mesne assignments are not recited: "All which said premises were originally demised by an indenture of lease bearing date on or about, &c., and made between, &c., for a term of, &c., commencing, &c., at the yearly rent of, &c., payable as therein mentioned, and subject to the covenants and agreements therein contained, and afterwards became vested in the said (testator) for the remainder of the said term, and were vested in him at the time of his death (as the case may be).

and every part thereof, with their appurtenances, unto the said (trustee), his executors, administrators, and assigns, for and during all the rest, residue, and remainder, of the said term of, &c., now to come and unexpired, and for and during all other the estate, right, title, and interest, of them, the said A. B., C. D., and E. F., in and to the same premises, nevertheless upon the trusts, ends, In trust to intents, and purposes, hereinaster declared and sell. expressed or referred to, of and concerning the same, (that is to say,) upon trust that he, the said J. K., his executors, administrators, or assigns, do and shall with all convenient speed, and without any further or other consent or concurrence of the said A. B., C. D., and E. F., or any or either of them, or any or either of their executors, administrators, and assigns, make sale and absolutely sell and dispose of the said, &c., hereby assigned, either by public auction or private contract, for the best By public price that can be obtained, and to assign and convey auction, or private conthe said hereditaments and premises to the pur-tract. chaser or purchasers thereof, or as he or they shall direct; AND it is hereby declared that the said (trustee), his executors, administrators, and assigns, shall stand possessed of the money arising from such sale, and of the rents and profits of the said premises in the meantime, in trust to discharge all expenses attending the said sale, and the performance of the trusts herein contained, and also the costs, charges, and expenses, of the said J. K., and of the said arbitration and award; and do and To divide shall stand possessed of the moneys which shall money purremain after answering the several payments here-award. inbefore mentioned or referred to, upon trust to pay, apply, and dispose of, the same to such one or more of them, the said A. B., C. D., and E. F., parties to these presents, and in such manner and proportion, and at such time or times respectively, as the said J. K., by his award in writing to be made on or before the —— day of, &c., shall direct, limit, or appoint; AND it is hereby declared

Receipts of

that the purchaser or purchasers of the said hereditaments and premises shall not be obliged to see to the application of his, her, or their, purchase money, after paying the same to the said (trustee), his executors, administrators, or assigns, and taking his, her, or their, receipt for the same, which receipt shall be a good discharge for all moneys therein expressed to be received; (add covenants by the said A. B., C. D., and E. F., with the trustee, that they had done no act to encumber,

Covenants.

trustee's refusal, &c.

and for further assurance, see p. 166); PROcase of the VIDED lastly, and it is hereby declared that in case the said (trustee), his executors, administrators, and assigns, shall decline, refuse, or become incapable, to act in the trusts aforesaid, it shall and may be lawful, to and for the said A. B., C. D., and E. F., and each and every of them, their and each and every of their executors, administrators, and assigns, to appoint another trustee in his or their place, to whom the said trust, property, and premises, shall, with all convenient speed, be conveyed; but such new trustee shall have and may exercise the same powers as well before as after such conveyance, in the same manner as if his Trustee's in- name had been inserted in these presents; and that neither the present nor any future trustee shall be answerable for any loss that may befall the said

demnity.

premises, unless the same shall happen by or through his or their wilful default. In witness, &c.

Assignment of a Contract for Sale of a Lease.

Parties.

Recital

This indenture made the —— day of, &c., BE-TWEEN A. B., of, &c., of the one part, and C. D. of, &c., of the other part; WHEREAS by articles of agreement, dated the --- of, &c., and made between E. F., of, &c., of the one part, and the said A. B., of the other part, the said E. F. in consideration, &c., did thereby agree to sell, and the said C. D. did thereby agree to purchase, ALL, &c.,

(describe the premises,) and, &c., (and set forth such of the stipulations as may be requisite,) and Contract whereas the said A. B. hath contracted with the said C. D. for the assignment of the said articles of purchase, and all his right and interest in and to the same, for the sum of \mathcal{L} —. Now this index- Witnessing TURE WITNESSETH, that, in consideration of the sum clause. of, &c., to the said A. B., well and truly paid by the said C. D., at, &c., the receipt of which is hereby acknowledged, he, the said A. B., doth hereby grant, Assignment. bargain, sell, assign, transfer, and set over, and unto, the said C. D., his executors, administrators, and assigns, ALL those, the said recited articles of agreement, and all the estate, right and title, benefit, advantage, property, claim, and demand whatsoever, of him, the said A. B., of, in, or to, the same, To HAVE AND TO HOLD the said articles, and all benefit and advantages thereof, unto the said C.D., his executors, administrators, and assigns, in as full, ample, and beneficial a manner, to all intents and purposes, as he, the said A. B., could or might have been entitled to the same if these presents had not been made. And the said A. B. doth hereby make, Power of nominate, and constitute, the said C. D., his executors, &c., his true and lawful attorney and attorneys, irrevocable in his name, but for the sole use and benefit of him the said C. D., to do, perform, and execute, every act, matter, and thing whatsoever, requisite and necessary for carrying the said articles of agreement into full effect. Provided, Provided of nevertheless, and it is hereby declared and agreed, indemnity to assignor. by and between the said parties hereto, that the said C. D., shall and will at all times indemnify and save harmless the said A. B., his heirs, executors, administrators, and assigns, from and against all costs, charges, and damages, which he, they, or any of them, shall or may pay, sustain, or be put unto, by reason of any action or suit, in pursuance of the power hereinbefore given; AND the said Covenant by A. B., for himself, his heirs, executors, and admi-assignor that the nistrators, doth hereby covenant with and to the agreement is

good, and that he hath assign.

And for better as-

signing

said C. D., in manner following, (that is to say,) good right to that for and notwithstanding any matter or thing by him done, omitted, or knowingly suffered, the said in part recited agreement is a good and valid agreement, and not in anywise forfeited, surrendered, or otherwise made void, and that he, the said A. B., hath full power and lawful authority to assign and assure the same; AND also, that he, the said A. B., his executors and administrators, shall and will at any time hereafter, upon the reasonable request, and at the costs and charges, of the said C. D., do and perform all such further and other acts for the better and more fully and satis-

assignee to veuants in articles.

factory assigning and assuring the said agreement, as by the said C. D., his executors, administrators, or assigns, or by his or their counsel in the law, Covenant by shall be advised, or devised and required; AND the perform co-said C. D., for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, with the said A. B., his heirs, &c., that he, the said C. D., shall and will well and truly pay, perform, observe, and keep, all and every the sum and sums of money, covenants, provisoes, agreements, and conditions, respectively, which are contained in the said in part recited articles. witness, &c.

(5.)

Assignment of leasehold Property from old Trustees resigning to new Trustees appointed, in their Stead.

Parties.

This indenture made, &c., BETWEEN A. B., of, &c., C. D., of, &c., (the old trustees), of the first part; E. F., of, &c., and G. F., his wife, (the celles que trusts,) of the second part; and H. J., and J. K., of, &c., of the third part, (recite the instrument creating the trusts after this manner). WHEREAS, by an indenture of assignment dated, &c., and expressed to be made between, &c., (and if a marriage settlement, say, "purporting to be a

Recital of the trust deed.

settlement made previously to a marriage then in contemplation, and which afterwards took effect, between the said E. F., and G. his now wife,) certain leasehold messuages or tenements and premises therein particularly described were assigned unto the said A. B. and C. D., their executors, administrators, and assigns, for the residue of a certain term of, &c., then to come therein, upon certain trusts therein declared concerning the same; AND Recital of WHEREAS, &c. (recite here the power of appoint- power to appoint new ing new trustees); (k) AND WHEREAS, the said trustees.

(k) The recital of the proviso will be thus: "And whereas, it was by the Recital of

(k) The recital of the proviso will be thus: "And whereas, it was by the said indenture of assignment provided, agreed, and declared, by and between the parties thereto, that in case the said A. B. and C. D., or any or either of them, or any succeeding trustees or trustee, to be appointed appoint new thould die, or be desirous to quit," &c. (setting forth the whole clause).

Where the new trustees are appointed to act in conjunction with the old trustees living, in the room of those dead, a person must be made a party of the fourth part for re-assigning the hereditaments to the continuing and new trustees. In which case, add, "And L. M., of, &c., of the fourth part;" and after the recital of the settlement and power, recite the death of the old trustees, thus: "And whereas, the said, &c., have since departed this with the old the leaving the said (surviving trustees) them surviving; and whereas, the his, leaving the said (surviving trustees) them surviving; and whereas, the trustees.

said (surviving trustees) have requested the said new trustees to become trustees of the said settlement in the room and stead of the said (deceased trustees), which they have consented to do; now this indenture witnesseth, that by virtue and in execution of the power and authority given to the said (surviving trustees) for that purpose, by the hereinbefore in part recited indenture of settlement, they, the said (surviving trustees), have nominated (as in the above form) the said (new trustees), to be new trustees in the room, &c., of the said (deceased trustees), and to act in and execute in conjunction with the said (surviving trustees), the several trusts so reposed in them the said (the old trustees) in and by the said in part recited indenture of settlement, and such of the said trusts," (as in the above form). And in the second witnessing part add, "For the purpose of vesting the said, &c., in the said new trustees, jointly with the said (continuing trustees), for the remainder of the said term of years, now to come and unexpired, therein and in pursuance, &c. (as in the above precedent); to hold, &c., unto the said I. M., his executors, administrators, and assigns, from henceforth, for and during the residue and remainder of the said term now to come and unexpired, subject, nevertheless, to the payment of the yearly rent, and to the performance and observance of the covenants, clauses, provisoes, and agreements, therein contained, and to be paid, performed, or observed, for or in respect of the said premises; but upon trust, nevertheless, and to the end and intentathat he, the said L. M., his executors or administrators, shall and do, immediately after the execution of these presents, by an indenture to be indorsed on these presents, and to bear even date herewith, assign and transfer all and singular the messuages, &c., and other the premises hereinbefore assigned, or intended so to be, and all the estate, right, title, trust, and interest, of him, the said L. M., therein and thereto, unto them the said (continuing and new trustees), their executors, administrators, and assigns, so and in such manner as that the same may be well and effectually vested in them, upon and for such and the same trusts and purposes, and under and subject to such and the same powers, provisoes, declarations, and agreements, as are contained, expressed, or declared, of or concerning the same messuages, or tenements and premises, in and by the hereinbefore in part recited inden-

Request made to new trustees.

A. B. and C. D. are desirous of resigning and being discharged from the trusts reposed in them by the hereinbefore in part recited indenture of, &c.; AND WHEREAS, the said E. F., and G. his wife, have requested the said H. J. and J. K. to become

The re-as-

ture of settlement, or such and so many as are now subsisting, and capable of taking effect." The re-assignment to be endorsed will be as follows: signment to "This indenture made the — day of, &c., between the within named be indersed. L. M., of the one part, and the within named (continuing and new trusters), of the other part; witnesseth, that in performance and execution of the trusts reposed by the within written indenture, and in consideration of the sum of five shillings of lawful money of Great Britain to the said A. B., in hand, well and truly paid by the said (continuing and new trustees), at the time of the execution of these presents, the receipt whereof is hereby acknowledged; he, the said (L. M.) doth, by these presents, bargain, sell, assign, transfer, and set over, and by way of conveyance only, and not by way of warranty of title, doth grant and confirm, unto the said (continuing and new trustees), their executors, administrators, and assigns, all and singular the messuages or tenements, and other the premises in the within written indenture described, and thereby assigned unto the said L. M., his executors, administrators, or assigns, or intended so to be, with their rights, members, and appurtenances; and all the estate, right, title, interest, trust, property, possession, claim, and demand, whatsoever, both at law and in equity, of him, the said (L. M.), of, in, to, out of, or concerning the same premises, and every part thereof, under or by virtue of the within written indenture, or otherwise howsoever; to have and to hold the said messuages, &c., and all and singular other the premises hereby assigned, or intended so to be, with their, and every of their, appurtenances, unto the said (continuing and new trustees), their executors, administrators, and assigns, from henceforth, for and during all the residue and remainder of the said term of -— years, now to come and unexpired, in the said premises, subject, nevertheless, to the payment of the yearly rents, in or by the said indenture of lease reserved, and to the performance and observance of the several covenants, clauses, provisces, and agreements, therein contained, to be henceforth paid, performed, or observed, for or in respect of the same premises; but upon, and for, such and the same, trusts, and to, and for, such and the same, ends, intents, and numbers and numbers. and purposes, and under, and subject to, such and the same powers, provisces, declarations, and agreements, as are contained, expressed, or declared, aforesaid, of or concerning the same messuages, &c., and premises, in or by the within in part recited indenture of settlement, or such or so many of them as are now subsisting, and capable of taking effect, to and for the end, intent, and purpose, that they, the said (continuing and new trustees), and the survivors and survivor of them, and the executors and administrators of the survivor, and their and his assigns, may be enabled to perform and execute all and every the same trusts, and exercise all and every the same powers and authorities, in like manner, in all respects, as if the names of the said (new trusters) had been inserted in the said indenture of settlement, instead of the names of the said (deceased and resigning trustees), and to, for, and upon, no other trust, intent, or purpose, whatsoever. In witness," &cc.

(In the case of freehold property, the appointing of additional trustees, to act with the surviving trustees, may be effected by one conveyance under the statute of uses; but, in respect to leasehold and personal property, it is requisite that the property be conveyed to some person nominated for the purpose, whereby the surviving trustees divest themselves of the trust estate; and then by the re-assignment from the person so nominated to the continuing trustees, and the new appointed trustees, the property thereby becomes vested in the trustees in joint tenancy; and upon the death of either of them, it will vest in the surviving trustee or trustees.)

trustees, and to take upon themselves the execution of the trusts of the said settlement, in the room of the said A. B. and C. D., which they have consented to do. Now this indenture witnesseth, Appointthat by virtue and execution of the power and trustees. authority given or reserved to the said E. F., and G. his wife, for that purpose, by the hereinbefore in part recited indenture, they, the said E. F., and G. his wife, have nominated, substituted, and appointed, and by this present deed, or writing, under their respective hands and seals, and attested by the two or more credible persons, whose names are, or are intended to be, hereupon endorsed, as witnesses attesting the same, do nominate, substitute, and appoint, the said H. J. and J. K. to be trustees in the room, place, and stead, of them, the said A. B. and C. D., to act in and execute the several trusts so reposed in them, the said A. B. and C. D., in and by the said in part recited indenture of settlement as aforesaid, or such of the said trusts as are still in being, and capable of taking effect; AND THIS INDENTURE FURTHER WITNESSETH, Assignment from old to that (for the purpose of vesting the said messuages new trustees or tenements and premises in the said H. J. and J. K., for the remainder of the said term of years, now to come therein respectively) in pursuance and for the purpose of the said in part recited indenture of settlement, and for and in consideration of the sum of five shillings, of lawful British money, to the said A. B. and C. D., in hand, well and truly paid by the said H. J. and J. K., at the time of the execution of these presents, the receipt whereof is hereby acknowledged, they, the said A. B. and C. D., at the request, and by the direction and appointment, of the said E. F., and G. his wife, testified by their severally being parties to and sealing and delivering these presents, do, and Operative each of them doth, hereby bargain, sell, assign, signment. transfer and set over, and relinquish, and quit, claim, and by way of conveyance only, and not for or by way of warranty of title, do, and each of them

Parcels.

doth, grant and confirm, unto the said H. J. and J. K., their executors, administrators, and assigns, all, &c., being the several messuages or tenements or premises, which in or by the hereinbefore in part recited indenture of settlement of the day of, &c., were assigned unto them, the said A.B. and C.D., as aforesaid, or mentioned, or intended so to be, and all other the messuages or tenements and premises of and to which they, the said A. B. and C. D., are under or by virtue of the said hereinbefore in part recited indenture, possessed of or entitled to at law or in equity, or which are legally or equitably subject to the trusts, powers, provisoes, declarations, or agreements, contained in the said indenture of, &c., together with all and every the rights, members, easements, privileges, advantages, and appurtenances, to the same premises belonging, or therewith, or with any part thereof, now or usually occupied or enjoyed, and all the estate, right, title, interest, term and terms of years now to come and unexpired, property, claim, and demand, whatsoever, both at law and in equity, of them, the said A. B. and C. D., in, to, out of, or upon, the said premises, or any part thereof; Habendum. TO HAVE AND TO HOLD the said messuages or tenements, and all and singular other the premises hereby assigned, or otherwise assured, or intended so to be, and every part and parcel of the same, with their, and every of their, appurtenances, unto the said H. J. and J. K., their executors, administrators, and assigns, from henceforth, for and during the residue and remainder of the said term of. years, which by efflux of time is yet to come and unexpired, in the said premises; subject, nevertheless, to the payment of the yearly rent, in or by the said indenture of lease reserved, and to the performance and observance of the several covenants, clauses, provisoes, and agreements, therein contained, to be henceforth paid, performed, or observed, for or in respect of the same premises, but upon, and for such, and the same, trusts, intents, and purposes,

Subject to the rent, &c.

(and under and subject to such and the same And subject powers of sale and exchange, and other powers to the same and provisoes,) as are contained, expressed, or are condeclared, of or concerning the same premises, in recited trust and by the said in part recited indenture of, &c., or deed. such and so many of them as are now subsisting, and capable of taking effect; to and for the end, intent, and purpose, that they, the said H. J. and J. K., and the survivors and survivor of them, and the executors and administrators of such survivor. and their and his assigns, may be enabled to perform and execute all and every the same trusts, and exercise all and every the same powers and authorities, in like manner, in all things, as if the names of the said H. J. and J. K. had been inserted in the said in part recited indenture of, &c., instead of the names of them, the said A. B. and C. D., and to, for, and upon, no other use, intent, or purpose, whatsoever; AND they, the said A. B. and C. D., Covenant by for themselves severally and respectively, and for trustees that their several and respective heirs, executors, and they have administrators, but not the one for the other of bered. them, or the heirs, executors, and administrators, or the acts, deeds, omissions, or default, of the other of them; but each for himself only, and his own heirs, executors, and administrators, and acts, deeds, and defaults, do, and each of them doth, hereby covenant, declare, and agree, with and to the said H. J. and J. K., their executors, administrators, and assigns, that they, the said A. B. and C. D., have not, nor hath any or either of them, each covenanting separately as aforesaid, at any time heretofore, either together or separately, made, done, committed, executed, or knowingly occasioned, suffered, or omitted, nor been parties or privies, or party or privy, to any act, deed, matter, or thing, whatsoever, whereby, or by reason, or means whereof, the said messuages or tenements and premises hereby assigned, or mentioned, or intended so to be, or any of them, or any part thereof, are, is, can, shall, or may be impeached,

Release to trustees resigning. charged, encumbered, or prejudicially affected, in any manner howsoever, or whereby the said A. B. and C. D. are or may be in anywise prevented from assigning and assuring the said messuages or tenements and premises, or any part thereof, unto the said H. J. and J. K., their executors, administrators, and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents; AND THIS INDENTURE FURTHER WIT-NESSETH, that in consideration of the premises, they, the said E. F., and G. his wife, do hereby respectively release, acquit, and for ever discharge, the said A. B. and C. D., their respective executors and administrators, henceforth and for ever, of and from all and every the trusts, powers, provisoes, declarations, and agreements, in the said hereinbefore recited indenture contained, by or on the part of the said A. B. and C. D., or any or either of them, their, or any or either of their, executors or administrators, to be performed and executed; and also of and from all and all manner of actions, suits, causes of action and suits, debts, accounts, reckonings, claims, and demands, whatsoever, at law and in equity, which the said E. F., and G. his wife, or either of them, or the executors or administrators of either of them, could or might have, claim, or demand, against, upon, or from them, the said A. B. and C. D., or any or either of them, or their or either of their executors or administrators, for or on account of any moneys which may have come to their or either of their hands in the execution of the trusts aforesaid, or for or on account of any payments or disbursements by them, or any or either of them, made of the said trust moneys, or by reason or in consideration of any other act. transaction, matter, or thing, whatsoever, at any time heretofore done or omitted by them, or any or either of them, in anywise relating to the trusts in or by the hereinbefore in part recited indenture, reposed or vested in them as aforesaid. In witness, &c.

(6.)

Assignment of Leaseholds under a Fiat in Bankruptcy.(l)

This indenture made the —— day of, &c., BE- Parties. TWEEN A. B., of, &c., (the official assignee of the estate and effects of G. H., of, &c., appointed by the commissioner acting under a fiat in bankruptcy awarded and issued against the said G. H.,) of the first part; C. D., of, &c., and E. F., of, &c., (assignees of the estate and effects of the said G. H., chosen at a meeting of the creditors of the said G. H.,) of the second part; the said G. H. of the third part; and (purchaser) of the fourth part; WHEREAS, under and by virtue of an indenture Recital of bearing date the, &c., and made, or expressed to be made, between R. S. of the one part, and the said G. H. of the other part, in consideration of the rent and covenants thereinafter reserved and contained. and on the part of the said G. H. to be paid and performed, the said R. S. did demise, lease, and to farm, let unto the said G. H., his executors, administrators, and assigns, ALL that, &c., (describe the parcels in the lease); to hold the same unto the said G. H., his executors, administrators, and assigns, from the day of the date of the indenture now in recital, for, and during, and unto, the full end and term of twenty-five years, subject to the payment of the yearly rent of £75, and to the performance and observance of the provisoes, covenants, conditions, and agreements, in the indenture now in recital contained, and on the part of the said G. H., his executors, administrators, and assigns, to be observed and performed; (m) AND WHEREAS,

(m) If the commissioners decline accepting the lease, the bankrupt may, by the statute 6 G. IV., c. 16, s. 75, discharge himself by delivering up the

⁽¹⁾ By the statute 1 and 2 W. IV., c. 56, s. 25, all the real and personal estate which formerly required to be assigned and conveyed by the commissioners to the assignees, now vests in them by their appointment, as fully to all intents and purposes as if such estate were assigned by deed. It is enacted by section 22 of the said act, that official assignees shall be appointed by the lord chancellor; and that in London bankruptcies each bankrupt's estate and effects shall vest in an official assignee, who, until the assignees are chosen, shall be deemed to be the sole assignee.

Fiat in bankruptcy.

a fiat for a prosecution of bankruptcy bearing date the —— day of, &c., hath been awarded and issued against the said G. H., under which he hath been duly adjudged a bankrupt; AND WHEREAS, he, the said A. B., being chosen official assignee of the estate and effects of the said bankrupt as aforesaid, and the said C. D. and E. F. being the assignees chosen by the creditors of the estate and effects of the said bankrupt as aforesaid, did cause the said leasehold messuage, &c., to be put up for sale by public auction, pursuant to notice for that purpose given in the public papers, on the —— day of, &c., at, &c., subject to certain conditions annexed to the printed particulars of sale then and there produced; and at such sale the said (purchaser), by himself or his agent, was the highest bidder for, and declared to be the purchaser of, the said leasehold messuage, &c., hereinafter described, at the sum of £500. Now this indenture witnesseth, that for carrying the said recited sale and purchase into effect, and for and in consideration of the sum of £ — of, &c., to the said A. B., in hand, well and truly paid by the said (purchaser), at or immediately before the sealing and delivery of these presents, the receipt of which said sum of £500 the said A. B. doth hereby admit and acknowledge, and of and from the same, and every part thereof, he, the said A. B.; and also, the said C. D., E. F., and G. H., do, and each and every of them doth, acquit, release, and discharge, the said (purchaser), his executors, administrators, and assigns, and every of them, for ever, by these presents, they, the said A. B., C. D., and E. F., po, and each and every of them DOTH, by these presents, bargain, sell, assign,

lease to the lessor. The lord chancellor may upon petition order the assignees to make their election.—See s. 76, ib.; and see p. 153, infra. The reason why such petition is necessary is, that the assignees may abandon such part of the bankrupt's effects which may turn out to be an interest producing nothing.—See the case of Bourdillon v. Dalton, 1 Esp. 233. But if the assignees do any act manifesting an intention to adopt the property, they will be liable as assignees to the covenants in the lease.—See Welch v. Myers, 4 Camp. 368. Thomas v. Pemberton, 7 Taunt. 206. Hanson v. Stevenson, 1 B. & A. 303.

Testatum.

transfer, and set over; and the said G. H. DOTH hereby grant, bargain, sell, assign, transfer, and set over, and also ratify and confirm, unto the said (purchaser), his executors, administrators, and assigns, all that the said messuage, &c., and all and singular other the premises, comprised in the said hereinbefore in part recited indenture of lease, and thereby demised or expressed, and intended so to be, with their, and every of their, appurtenances, and all the estate, right, title, interest, term and terms of years yet to come and unexpired therein, trust, property, possession, possibility, claim, and demand, whatsoever, as well legal as equitable, of them, the said A. B., C. D., E. F., and G. H., and each and every of them, of, in, to, or out of, the same premises, every or any part or parcel thereof; TO HAVE AND Habendum. TO HOLD the said messuage, &c., and all and singular other the premises hereinbefore assigned or expressed, and intended so to be, with their, and every of their, appurtenances, unto the said (purchaser), his executors, administrators, and assigns, for and during all the rest, residue, and remainder, now to come and unexpired, of the said term of twenty-five years thereof, granted by the said hereinbefore in part recited indenture of lease, subject, nevertheless, to the payment of the yearly rent, and to the performance and observance of the covenants and agreements in and by the same indenture of lease reserved and contained, and henceforth on the lessee's or assignee's part, in respect of the said premises, to be paid, kept, done, and performed; AND Covenante each and every of them, the said A. B., C. D., and by assignees that they E.F., severally, separately, and apart from each other, have done and so far as concerns his own acts and deeds, but comber. not further or otherwise, doth hereby for himself, and his respective heirs, executors, and administrators, covenant and declare, with and to the said (purchaser), his heirs, executors, administrators, and assigns, that they, the said A. B., C. D., and E. F., respectively, or any or either of them, neither have nor hath at any time or times hereto-

fore, made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been parties or party, or privies or privy, to any act, deed, matter, or thing, whatsoever, whereby, or by reason, or means whereof, the said leasehold messuage, &c., hereby assigned or expressed, or intended so to be, or any part thereof, are, is, can, shall, or may be, impeached, charged, affected, or incumbered, in title, term, estate, or otherwise howsoever; AND, &c., (add the usual covenants by G. H. the bankrupt, adapted to the assignment of leases,) that notwithstanding any act, deed, matter, or thing, by him, the said G. H., made, done, committed, or executed, or knowingly or willingly suffered to the contrary, (except as appears by these presents,) the hereinbefore in part recited indenture of lease is at the time, &c., good, &c.; and that for and notwithstanding any such act, deed, matter, or thing, as aforesaid, they, the said A. B., C. D., E. F., and G. H., or some or one of them, have or hath in themselves or himself, good right, full power, and lawful and absolute authority, to bargain, sell, assign, and assure, the said, &c., unto, &c.,(n) for quiet enjoyment; free from incumbrances; and for further assurance. (o) In witness, &c.

Covenants for title.

(o) For these covenants, see p. 165.

⁽n) Neither the assignees nor the bankrupt can require the usual covenant and indemnity from the purchaser for payment of the rent, and performance of the covenants reserved in the lease.—See Wilkins v. Fry, 1 Mer. 244; and see 6 G. IV., c. 16, s. 75. Indeed, the assignees may assign without the consent of the lessor, although the bankrupt is restrained by his covenant from assigning, because they are assignees at law, and not by the acts of the party.—Goodbehere v. Bevan, 3 M. & S. 353. So assignees may discharge themselves of their liability by assigning to another person, although he may be a pauper, or have left the country.—Taylor v. Shum, 1 B. & P. 21. Onslow v. Corrie, 2 Madd. 330. For this reason it has been held that they cannot require an indemnity from the purchaser.—Wilkins v. Fry, 1 Mer. 244. S. C. Rose, 370.

(7.)

Assignment of a Policy of Insurance whereby Buildings are insured against Damage or Destruction by Fire.

This indenture made the —— day of, &c., BE- Parties. TWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part; WHEREAS, by a certain Recital of deed poll or instrument in writing dated on or policy. about, &c., being, or purporting to be, under the hands and seals of, &c., three of the directors of the - insurance company or office, in, &c., and numbered, &c., ALL that, &c., with the outbuildings, &c., thereunto belonging, (p) were, and now are, insured against loss or damage by fire, for the term of —— years, from the —— day of, &c.; AND WHEREAS, &c. (recite the contract for the assignment.) Now, Therefore, This indenture Testatum. WITNESSETH, that (q) for and in consideration of the sum of £ —, of lawful money of Great Britain, by the said C. D. to the said A. B., paid at the time of the execution of these presents, the receipt whereof is hereby acknowledged, he, the said A. B., doth, by these presents, bargain, sell, assign, transfer, and set over, unto the said C. D., his executors, administrators, and assigns, all that the said deed poll, or policy of insurance, purporting to bear date, &c., and numbered, &c., and so being, or purporting to be, under the hands and seals of three of the directors of the —— insurance office or company as hereinbefore is mentioned, and all and every sum and sums of money which shall or may

(q) When the deed of conveyance is recited, say, "That for the consideration in the said indenture, and of the sum of," &c.

⁽p) If the goods in the house are also insured, say, "And the goods, furniture, and effects, therein or thereupon." When the messuage has been conveyed to the assignee, and the assignment of the policy is assigned by a separate instrument, (which is usually done that the same may be exhibited separately at the office if required, for to prove an insurance from fire, the policy must be produced.—Rex v. Doran, 1 Esp. 127,) recite the conveyance shortly, after this manner: "And whereas, by indenture dated, &c., and made between, &c., the said messuage, &c., and premises, were conveyed and assured unto the said (assignee); and it was agreed that the benefit of the insurance should also be assigned to him in manner hereinafter mentioned."

become due and payable thereupon, or by virtue Habendum. thereof; TO HAVE, receive, and take, the said policy of insurance, and all and every sum and sums of money which shall or may become due and payable thereupon, or by virtue thereof, and all other benefit and advantage whatsoever, which shall or may accrue from or in respect of the same, unto the said C. D., his executors, administrators, and assigns, to and for his and their own use and benefit, free from all charges and incumbrances whatsoever; (r) AND the said A. B. doth hereby make, constitute, and appoint, the said C. D., his executors, administrators, and assigns, his true and lawful attorney and attorneys, for receiving all and every sum and sums of money which may at any

Power of attorney.

When by way of mortgage.

(r) If the assignment be to accompany a mortgage of the premises, say, "Subject, nevertheless, to such or the like equity or right of redemption as in or by the said recited indenture of, &c., is expressed, with respect to the said messuage, &c., thereby granted, &c.; and further, that he, the said (mortgagor), his executors or administrators, shall and will at all times, at his or their costs, when the said policy of insurance shall be vithin one month of expiring, renew the same, or otherwise insure the buildings, (goods,) and premises, in the same or some other insurance office against fire, to be approved of by the said (mortgager), his executors, &c., in the sum of, &c., for the period of —— years, to be computed from the expiration of the now existing policy, so that the said hereditaments may be kept insured in the said sum of, &c., and will at all times, when required by the said C. D., produce the receipts and vouchers for the payments affecting such insurance; and further that he will on request, but at the costs of the (mortgagor), assign such renewed policy, and benefit thereof, unto the said (mortgagee), his executors, &c., for better securing the said mortgage money and interest, and in the meantime all benefit to be derived therefrom shall be in trust for the said (mortgagee,) his, &c.; and if the said (mortgagor), his executors, &c., shall at any time neglect to insure the said, &c., or to produce such vouchers or receipts, it shall be lawful for the said (mortgagee), his executors, &c., to insure the said premises in the said sum of, &c., in the names of them, the said (mortgager and mortgagee), their respective executors, &c., and keep the same insured at his or their discretion; and it is hereby declared, that the sum or sums which shall be so paid for such insurance, (not exceeding, &c.,) together with interest for the same, after the rate, &c., shall be a further charge upon the said premises so mortgaged as aforesaid; and in case the said hereditaments shall be destroyed or damaged by fire, the sum or sums which shall be received by virtue of the said policy or policies shall be laid out in re-building or repairing the said premises as shall be destroyed or damaged, or taken by the said (mortgagee), his executors, &c., in payment of the said sum of, &c., and interest, or other sum or sums then chargeable on the said hereditaments; and the said (mortgagee) doth declare, that any receipt of the said (mortgagee) for all moneys which shall be paid to him upon the said policy, shall be a good and sufficient discharge to the said company or office, and that they shall not be liable to see to the application of the same, or any part thereof, so, nevertheless, that the said recited indenture of mortgage be then in the hands of the said (mortgagee), his (heirs), executors, administrators, or assigns."

time or times be payable, for or by virtue of such insurance as aforesaid, with full power to appoint any other person or persons in his or their place or stead for that purpose; and doth hereby expressly declare, that the receipt and receipts of the said C. D., his executors, administrators, or assigns, or of his or their attorney or attorneys, shall from time to time, and at all times, be a good, sufficient, and effectual, discharge for any sum or sums which shall be payable, or paid to him or them, for or in respect of any insurance as aforesaid; AND the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with and to the said C. D., his executors, administrators, and assigns, that notwithstanding any act, matter, or thing, done or committed by him to the contrary, he, the said A. B., at the time of the execution of these presents, hath in himself good right to assign the said policy of insurance unto the said C. D., his executors, administrators, and assigns, in manner aforesaid; AND that free and clear of and from all charges and incumbrances whatsoever; and further, that he, the said A. B., his executors, administrators, and assigns, shall and will at all times do and execute all further acts, deeds, matters, and things, whatsoever, for the better assigning and assuring the said policy of insurance and premises unto the said C. D., his executors, administrators, and assigns, to and for his and their own proper use and benefit, or otherwise, as he or they, or his or their counsel in the law, of the degree of a barrister, shall advise or require. In witness, &c.

OBSERVATIONS AND CASES.

Construction of assignment.

Where a person transfers all his interest in a term to another, reserving rent to himself, it does not operate as an assignment, but as an underlease.(s) One who has a term which expired on the 11th of November, let the premises orally from the 11th of September to the 11th of November for £270, payable immediately; held that this was a lease of which parol evidence might be given, and not an assignment requiring a writing. (t)by lessees for lives of all their estate, right, title, interest, &c., in the premises, to one, and his executors, habendum to him and his executors for ninety-nine years, if the lives should so long continue, in as large, ample, and beneficial way, &c., as the grantors, their heirs, &c., held the same;—this was considered as no assignment of the freehold, and consequently not of the whole interest of the grantors in their lease; and, therefore, the reversioners (the lives being expired within the term) could not maintain covenant against the under-lessee for not delivering up the premises in good repair.(u) An assignment of a term to defendant of certain premises indorsed on the back of the lease which was executed by the plaintiff, but not by the defendant, is evidence for the plaintiff to show that he has performed his part of an agreement to assign Under a contract for the assignthe lease.(v)ment of a term, whether from the original lessee or a mesne assignee, the purchaser must covenant for indemnity against payment of rent and performance of covenants, though he cannot have a covenant for title from the assignor as being an executor, and

⁽s) Preece v. Corrie, 2 M. & P. 57. 5 Bing. 24. (t) Id.

⁽u) Derby (Earl) v. Taylor, 1 East, 509. (v) Hawkins v. Sherman, 3 C. & P. 459.

also by express stipulation. (n) A reversion of a tenancy from year to year cannot pass without deed; therefore, where A. and B. had occupied apartments for some years in the same house as yearly tenants, and A. secretly made a parol agreement with the common landlord in May, to take the whole house as a yearly tenant from the then ensuing Midsummer, at which season B.'s tenancy had commenced; but B. never attorned or acknowledged A. as his landlord, but paid his ensuing Midsummer rent, and tendered his ensuing Michaelmas quarter's rent, (acceptance of which was refused,) to the landlord's agent, who directed him, on both occasions, to pay his rent from the former period to A.; and A., on B.'s refusal to do so, distrained for the Michaelmas quarter's rent, and at the following Christmas gave B. six months' notice to quit:-in an action of trespass for the illegal distress, it was held, first, that A.'s interest in the part of the premises occupied by him was undetermined, no regular notice to quit having been given him by his proper landlord. Secondly, that the reversion of it had not passed directly to A. by parol, nor indirectly as appendant to A.'s apartment, considered as surrendered to the landlord by virtue of the agreement, and re-demised. And thirdly, that B. was still the tenant of his original landlord, and not of A., and consequently that the action was main-A lease having been granted for tainable.(x)lives, with covenant for perpetual renewal, the grantees demised the land by an indenture having all the forms, and subject to all the obligations of a common lease, with covenants for payment of rent, and powers reserved of distress and re-entry for the non-payment, covenant for perpetual renewal, &c. The habendum was for the same lives as in the original lease, but this fact did not appear by the indenture of lease. The rent being in arrear, and a distress thereupon taken for it, upon a replevin,

⁽w) Staines v. Morris, 1 Ves. & B. 9. (x) Brawley v. Wade, M'Clel. 664.

the defendants pleaded their title by a general avowry under the Irish statute, 25 G. 2., c. 13, (11 G. 2. Eng.); held that the evidence was admissible to show that the lives in the sub-lease were the same as in the original lease; that the whole interest having been granted it operated as an assignment; and that the defendants in replevin could not avow generally under the statute. (y)

Liability of lessee.

The lessee under express covenant to pay the rent and perform the covenants, is liable during the whole term, notwithstanding assignments.(z) Without acceptance of rent by the lessor from the assignee of rent, or some other evidence of his assent, will not be sufficient to discharge the lessee from an action of debt, although the lessor have A lessee cannot plead to covenant for notice.(a) rent an assignment and tender by the assignee.(b)

Liability of assignee.

The assignee of a lease is not hable to the original lessor for the breach of a covenant which does not run with the land, unless he be expressly named in the lease as a covenantor.(c) Nor is he liable for a breach in the lessee's time when he comes into pos-The assignee of a lease for session afterwards.(d)years who has assigned over, is discharged from the covenant to pay rent before the entry of his assignee.(e) An assignee is not liable for rent accruing due after an assignment, even though such assignment is wrongful. (f) There is no fraud in the assignee of a term assigning over his interest to whom he pleases, with a view to get rid of a lease, although such person neither takes actual possession, nor receives the lease.(g) In covenant for rent against an assignee, an assignment to a feme covert

⁽y) Pluck v. Digges, 5 Bligh, N. S. 31.
(z) Staines v. Morris, 1 Ves. & B. 9.
(a) Wadham v. Marlow, 4 Doug. 54. 1 H. B. 438, n. 2 Chit. 600. 8
East, 314.
(b) Orgill v. Kemshead, 4 Taunt. 642.
(c) Grey v. Cuthbertson, 2 Chit. 482. 1 Selw. N. P. 498. 4 Doug. 351.
(d) St. Saviour's, Southwark v. Smith, 3 Burr. 1271. 1 W. B. 351.
(e) Walker v. Reeve, 3 Doug. 19. 2 Doug. 461, n.
(f) Paul v. Nurse, 8 B. & C. 486.
(g) Taylor v. Shum, 1 B. & P. 21.

before the rent accrued is a good plea in bar.(h) A lessee by deed poll assigned his interest in the demised premises to A., subject to the payment of rent and the performance of the covenants contained in the lease; A. took possession and occupied the premises under this assignment, and before the expiration of the term assigned to a third person. The lessor sued the lessee for breaches of covenant committed during the time that A. continued assignee of the premises, and recovered damages against the lessee;—held that the lessee might maintain an action upon the case founded on tort against A., for having neglected to perform the covenants during the time he continued assignee, whereby the lessee sustained damage.(i) lessee who was bound by a covenant to repair premises demised to him, underlet part of them with a similar obligation by his tenant, to repair them within three months after notice given to him for that purpose, and the premises underlet becoming out of repair, the superior landlord gave notice to his immediate tenant to repair them at the peril of forfeiting his lease, and the under-tenant after receiving notice to repair neglected to do so within three months, whereupon the lessee, in order to avoid a forfeiture of his whole estate, entered on the premises, and put them in tenantable repair;—held that his under-tenant was liable to pay him the whole expense so incurred, although the former had sold his interest in the premises to a purchaser who had entirely re-built them before the action for the recovery of such expense was brought.(j) the assignee of an under-lessee, containing a covenant to repair, suffered the premises to go out of repair, and the original lessor brought an action against the original lessee for the breach of a similar covenant contained in his lease, held that the damages and costs of that action, and also the costs

⁽Å) Barnfather v. Jordan, 2 Doug. 452. (i) Burnett v. Lynch, 5 B. & C. 589. 8 D. & R. 368. (j) Colley v. Stretton, 3 D. & R. 522. 2 B. & C. 273.

of defending it, might be recovered as special damages in an action against the under-tenant for the breach of his covenant to repair. (k)assignee who takes leasehold premises by an indenture indorsed on the lease, subject to the payment of the rent, and the performance of the covenants and agreements reserved and contained in the lease, is not liable in covenant to the lessee for rent which the lessee has been called on by the lessor to pay after the assignee has assigned over.(1) the original lessee is obliged to pay ground rent, he may recover it from the assignee in possession. (m) If a person has held under the terms of a lease, and holds over after the lease is at an end, he is bound by the terms of it, although no new bargain to that effect is entered into between the parties; but if he comes in as an under-tenant before any lease was granted to the person of whom he took the premises, and that person afterwards take a lease, if there is no evidence that he knew of the lease, it will be for the jury to say whether he is not an under-tenant, and not an assignee of the lease.(n) An assignee of a lease containing covenants running with the land, is liable after he has assigned over for a breach incurred after the assignment to him, and before his assignment over.(o)

Bankruptcy

The usual covenant not to let will not prevent a lease passing to the assignees.(p) If a lessee becomes bankrupt, the term remains vested in him until either the assignees elect to take it, or until he himself delivers it up under the provisions of the

⁽k) Neale v. Willie, 5 D. & R. 442. 3 B. & C. 533. The reason was, in this last case, because, during the term of the under lessee, the original lessee could not have entered for the purpose of repairing without making himself a trespasser.

⁽I) Wolveridge v. Steward, l C. & M. 644. 3 Tyr. 637.
(m) Stone v. Evans, Peake's addl. cas. 94.
(n) Torriano v. Young, 6 C. & P. 8. If the assignee of a lease commit

waste, the landlord may sue him in covenant, or in a special action on the case, but not in assumpsit.—Id.

(o) Harley v. King, C. M. & R. 18. 1 Gale, 100.

(p) Doe d. Mitchinson v. Carter, S T. R. 57, 300. Lloyd v. Crisps Taunt. 249. See note to p. 153.

statute 6 G. IV., c. 16, s. 75.(q) The assignees of Assignees of a bankrupt lessee by accepting the lease, discharges bankrupt. the bankrupt from any claim upon him for rent. (r) It is no defence at law to an action on an indenture of lease by the trustee of the party who has become bankrupt, that the defendants (the lessees) have performed their covenants with the assignees of the cestui que trust.(s)

⁽q) Tuck v. Tyson, 6 Bing. 321. 3 M. & P. 715 (see p. 153); and see note (s) to same page, as to the effect of bankruptcy on covenant not to assign without licence.
(r) Onslow v. Corrie, 2 Madd. 330.
(s) Britten v. Britten, 2 C. and M. 597. 4 Tyr. 473.

ATTORNMENT.

Signification of.

Why formerly made in grants.

ATTORNMENT signifies the acknowledgment of a new lord on the alienation of lands, and the assent or agreement of the tenant to attorn; as, I become How made. tenant to the purchaser. It may be made by payment of a penny rent to the grantee, or assent in writing. (t) It was formerly usual upon grants and conveyances of manors, lands, rents, reversions, &c., that attornment should be made, and for the following reasons: First, that the tenant in possession might not be subjected to a stranger or new lord without his own approbation and consent. Secondly, that he might know to whom he was to render his services, and distinguish the lawful distress from the tortious taking of his cattle. Thirdly, that by such attornment the grantee of the reversion or seigniory might be put into the possession of it, and that others might be apprised and informed of the transfer. In short, this attornment was nothing else but the tenant's knowing of the grant, and assenting thereunto, which used to be indorsed on the grant, and signed by him. Stat. 4 Anne by the statute 4 Anne, c. 16, s. 9, attornments are rendered unnecessary to the completion of a grant;

What attornment amounted

and by 11 G. 2, c. 19, attornments of lands made 11 G. 2. by tenants to strangers shall be void, and their landlord's possession not effected thereby, though this will not extend to vacate any attornment made pursuant to a judgment at law, or with the consent of landlord. (u)

How far mortgage.

The reason, however, for attornment, so far as it now appli-eable to a proceeded on notice to the tenant, is still applicable to the case of a mortgage, where the mortgage is made subsequently to the lease; for a mortgagee will

⁽t) Co. Litt. 309. (u) Attornment, in a great measure, ceased from the change of manners, and the decline of feudal principles.—See Watk. Prin. c. 2. (Grant.)

not be entitled to rent under a lease made prior to the mortgage until he shall have given notice to the tenant (v) of the mortgagor, and required payment of the rent to himself; otherwise than this, actual attornment is seldom heard of in practice except to a receiver, or in the case of a recovery in ejectment, Applicable where the tenants frequently attorn to the lessor of to receivers, the plaintiff, in order to save the expenses of of theotment sheriff's poundage and officer's fees on executing a writ of possession.

(1.)

Attornment in an Action of Ejectment, to save the Expense of executing a Writ of Possession.

In the Q. B. (C. P., or Exch.)

Between John Doe on the demise of A. B. plaintiff,

and

Richard Roe

defendant.

To all to whom it may concern, we, whose names Form of atare hereunto subscribed, being tenants in possession torament. of the premises for which this action has been brought, situate, &c., do hereby severally attorn tenants to C. D., of, &c., for such parts of the said premises as are in our respective possessions; and we have this day severally paid unto the said C. D., the sum of one shilling each upon such attornment, on account of, and in part payment of, the rent due, and to become due, from us severally and respectively, for and in respect of the said premises, and we also severally and respectively become tenants thereof, to the said C. D., from the —— day of, &c. In witness whereof, we have hereunto set our hands this —— day of, &c.

⁽v) See the form of this notice under the head " Notices."

(2.)

Another Form by Tenants to a Mortgagee or other Person after Judgment in Ejectment.(n)

Recitals.

To all to whom, &c. WHEREAS, declarations on the demise of A. B., of, &c., (mortgagee,) in ejectment having been delivered to each of us, whose names and seals are hereunto subscribed and set, being respectively tenants or occupiers of or from R. S., (mortgagor,) of, &c., of the messuages, farms, and lands, mentioned opposite to our respective names in the schedule hereunder written, in order to the recovering possession of the same premises. And whereas, the said (mortgagor), after notice of such declaration in ejectment, hath, as we are advised, suffered judgment by default to be entered of record for the plaintiff in ejectment, or his lessor, in the said Autornment action. Now know yr, that we, whose names are so subscribed, and seals affixed, as aforesaid, have, and each of us (so far as respects the messuage or messuages, farm, and lands, mentioned opposite to our respective names in the schedule to these presents, and now in the occupation of himself, or his under-tenant, at the yearly rent therein mentioned) hath attorned and become tenants and tenant, and by these presents do, and each of us doth, attorn, and become tenants and tenant to the said (mortgagee), for and in respect of the same several messuages, farms, and lands, and every of them; AND in testimony of such attornment, we, the said several tenants, parties hereto, have paid to the said (mortgagee), the sum of sixpence each; AND we do hereby promise and agree henceforth severally to pay, or cause to be paid, our respective rents due and payable, and to become due and

⁽w) Form by indorsement: "Know all men, that I within named (tenant), did, on the —— day of, &c., last past, attorn and become tenant to the within named (mortgager), and agree to pay such rent, and at such times, as are therein mentioned; and in testimony thereof, did give one shilling in the name of attornment, in the presence of C. D. and B. F., whose names are hereunto subscribed."

payable, for the said respective farms, lands, and hereditaments, set forth in the said schedule, to the said (mortgagee), his executors, administrators, or assigns; and shall and will, on the several expirarations of our respective leases or tenancies, deliver up the possessions of the premises by us held respectfully to the said (mortgagee), and not to any other person or persons, unless otherwise compelled or directed by the judgment, order, or decree, of some court of law or equity. In witness, &c.

The schedule above referred to. (See n. to p. 204.)

(3.)

Another Form of Attornment by Tenant to the Lessor of the Plaintiff in Ejectment brought

by a Mortgagee.

In the, &c.

Between John Doe, on the demise of (mortgagee) plaintiff,

and

(mortgagor)

defendant.

Know all men by these presents, that I, whose Attornment. name is hereunder written as signing hereof, being tenant in possession of the messuage and premises in question in the above cause, situated and being in the parish of, &c., in the county of, &c., do hereby attorn tenant to R. S., of, &c., (mortgagee,) (lessor of the plaintiff in the said cause, of the said messuages and premises so in my possession,) and I have this day paid to the said (mortgagec) the sum of one shilling in the name of attornment, and on account and in part of the rent due, and to become due from me, for or in respect of the said premises, and that I do hereby accordingly become tenant thereof to the said (mortgagee), from the - day of, &c., last past. As witness my hand this — day of, &c.

(4.)

Attornment by Tenants to the Mortgagee, by the Direction of the Mortgagor, without Suit.

Attornment.

To all to whom it may concern, know ye that we, the undersigned, (x) holding and renting certain farms, lands, and hereditaments, situate, &c., as tenants to J. K., of, &c., (the mortgagor,) as follows, (that is to say,) A. B. now holds all that farm called, &c.; C. D., all that, &c.; and E. F., all that, &c.; and the said several farms being now in mortgage to L. M., of, &c., (the mortgagee); and the said J. K. being desirous that the said L. M. should have possession of the respective premises, we, the said A. B., C. D., and E. F., by the direction of the said (mortgagee), testified by his being a party to and signing these presents, do hereby severally agree to pay over the several rents due and payable for our respective farms to the said (mortgagee), his executors, administrators, and assigns; and each of us, the said A. B., C. D., and E. F., have given one shilling in the name of attornment, and in part payment of the said rent. In witness, &c.(y)

(5.)

Memorandum of Attornment by a Mortgagor in Possession of leasehold Premises to a Mortgagee, where a Receiver is appointed in the Deed (endorsed upon the Security).

MEMORANDUM, that I, the within named (mort-gagor), for the better enabling the within named

(x) If by way of schedule, say, "We, whose names are hereunto subscribed, being tenants in possession of the several messuages, or farms and lands, mentioned opposite our respective names in the schedule hereunder written; (and if by leases) by virtue of certain indentures of lease to us respectively granted by the said (mortgagor); (and if the leases are subsquently to the mortgage, say) which said leases are dated subsequently to the mortgage of the said hereditaments, from the said J. K. to the said L. M."

(y) The schedule may be in this form:—

Names of Tenants.	Names and situations of messuages, &c.		Rent.	Times when payable.

(mortgagee), to receive the interest of the within named sum of £ ---, at such times, and in such manner, as within mentioned, by and out of the rents, issues, and profits, of the within described messuages or tenements and hereditaments, or so much, and such part or parts thereof, as are or is now in the occupation of me, the said (mortgagor); I, the said (mortgagor), do hereby attorn and become tenant to the said (mortgagee), his executors, administrators, and assigns, of the same premises, at the yearly rent of \mathcal{L} —, to be paid half-yearly, (that is to say,) on the —— day of, &c., and the —— day of, &c., in every year, during so long time as the said sum of £ ----, or any part thereof, shall remain secured upon the said hereditaments. (z) In witness, &c.

(6.)

Direction by Assignees (of a Mortgagor) under a Fiat in Bankruptcy to Tenants to attorn to the Mortgagee by Indorsement on the Deed or Security.

To all to whom, &c. We, (assignees,) being the Recital. assignees of the within mentioned premises, under a fiat in bankruptcy bearing date, &c., awarded and issued against the within named (mortgagor), send greeting; whereas there is now due to the within named (mortgagee), under the within written indenture, the sum of £——, for which he hath obtained judgment in ejectment, (or as the case may be,) as of—— term last. Now know ye, that Direction. for the better raising and satisfying the arrears of the said interest, we, the said (assignees), do hereby direct the several tenants of the messuages, lands, and hereditaments, within described, to

⁽z) And if six months' notice is agreed to be given by the mortgage deed previous to demanding the rents, add, "But subject, nevertheless, to the proviso within contained, prohibiting the within named receiver from demanding the said rents, issues, and profits, or any part thereof, until six months' interest upon the said principal sum remaining due for the time being shall be in arrear, and unpaid to the said (mortgagee), his executors, administrators, or assigns."

attorn and become tenants of the same to the said (mortgagee), and pay the rents, and arrears of rent due, and to become due, in respect thereof, to him, the said (mortgagee), his executors, administrators, and assigns, from henceforth, until all arrears of the said interest now due, and which shall hereafter grow due, in respect of the said principal money, and also all costs and charges incurred, or to be incurred, at law or in equity, in anywise relating to the same, whereof due notice to you respectively shall be given by us; and we, the said (assignees), do hereby further direct and agree that the said (mortgagee), his executors, administrators, and assigns, shall and may let all such parts of the said premises as now are, or shall at any time hereaster be, untenanted, to any person or persons whomsoever, for the best or other sufficient yearly rent or rents, without any premium or foregift being taken for the same; and for your so doing, this shall be to you, and every of you, a sufficient authority and indemnity. In witness, &c.(a)

⁽a) A mere attornment requires no stamp; but if it stipulates to pay such rent as shall be agreed upon between the parties, it will require an agreement stamp.—Cornish v. Searall, 1 M. & R. 703. 8 B. & C. 471.

AWARDS.

By the 9th and 10th W. the 3rd, c. 15, 9 and 10 W. merchants, traders, and others, desiring to end empowering any controversy, suit, or quarrel, for which there arbitration. is no other remedy but by personal action or suit in equity, may, by arbitration, agree that their submission of their suit to the award, or umpirage of any person, shall be made a rule of any of his majesty's courts of record, and to insert such their agreements in their submission, or the condition of the bond or promise whereby they oblige themselves respectively, and which may, on affidavit of the witnesses thereto, or any one of them, be made a rule of court, and that the parties shall submit to, and finally be concluded by, the arbitration or umpirage, which shall be made concerning them by the arbitrators or umpire, pursuant to such submission; and in case of disobedience to such arbitrator or umpirage, the party neglecting or refusing shall be subject to all the penalties of contemning a rule of court.

This act was made to put submissions, where no The object cause was depending, upon the same footing as if of the act. there was a cause. (b) Under this statute, the Parol subcourt have no authority to make a parol submission mission.

to an award a rule of court.(c)

So where, in the course of proceeding before an Agreement arbitrator, the parties agreed by parol that the for arbitration as to a arbitrator should determine as to a lease to be lease within granted, it was held that such an agreement was of frauds. within the statute of frauds, and the award having directed a lease to be made, could not be enforced.(d)

⁽b) Before this act, a reference could not be resorted to unless a cause was depending.—See Lucas v. Wilson, 2 Burr. 701.

(c) Ansell v. Evans, 7 T. R. 1. But see 17 Ves. jun. 419.

(d) Walters v. Morgan, 2 Cox, 369.

As to the arment.

The court will not make a submission to an bitration of award a rule of court when part of the matter of an indict agreed to be referred has been made the subject of an indictment.(e) But a party who has preferred an indictment for an assault may submit the adjustment of the reparation to arbitration, as well as the costs.(f)

As to sub-

A submission may be made a rule of court after mission be-ing made a the award is made.(g) But it was improper, prior rule of court to the act 3 and 4 W. IV., c. 42, s. 39, to make a after revocation by one submission a rule of court after it had been revoked of the par by one of the parties.(h)

3 and 4 W. leave of court.

By the said act of 3 and 4 W. IV., c. 42, s. 39,(i) IV., c. 42, s. the power and authority of arbitrators or umpires 39, making appointed by or in pursuance of any submission to not revoc- reference, containing an agreement that such submission shall be made a rule of court, shall not be revocable by any party to such reference, without leave of the court, or a judge; and the arbitrators or umpires are to proceed with the reference, notwithstanding any such revocation, and to make an award, although the person making such revocation shall not afterwards attend; and the court or a judge thereof may, from time to time, enlarge the time sec. 40 an- for making the award. And by section 40, upon thorisingthe references by rule, or order of court, or a judge, or of nisi prius, or by submission containing an agreethe attend-ment, for making it a rule of court, the court by which the rule or order shall be made, or which shall be mentioned, in the submission, or any judge by rule or order, may command the attendance and examination of any person to be named, or the pro-

court to command nesses.

⁽e) Watson v. M'Cullum, 8 T. R. 520. Nor when there is a cause depending.—Lonsdale (Lord) v. Littledale, 2 Ves. jun. 451.

(f) Baker v. Townshend, 1 Moore, 130. 7 Taunt. 422. 1 Moore, 287.

Holt, 335.

⁽g) Smith v. Symes, 5 Madd. 74, S. P. Featherstone v. Cooper, 9 Ves. jun. 67.

Power of re-

⁽h) King v. Joseph, 5 Taunt. 542.
(i) Before this statute, it was held that when a cause was referred, vocation be- although by order of nisi prius, either party had power to revoke the subfore this act. mission, and the court could not vacate the revocation, or compel the party revoking to pay costs to the other party, unless a power to do so is given by the order of reference.—Skee v. Coxon, 10 B. & C. 483.

duction of any documents to be mentioned, in such rule or order; and disobedience shall be deemed a contempt, if in addition to the service of such rule or order, an appointment of the time and place of attendance in obedience thereto, signed by one at least of the arbitrators, or by the umpire, before whom the attendance is required, shall also be served either together with or after the service of such rule or order; provided that the witness shall be entitled to the like conduct money, and payment of expenses, and for loss of time, as for and upon attendance at any trial, and provided that the application for the rule or order shall set forth the county where such witness is residing at the time, or satisfy such court or judge that such person cannot be found; provided also, that no person shall be compelled to produce any writing or other document that he would not be compelled to produce at a trial, or to attend at more than two consecutive days to be named in such order.(j)

And by section 41, when it shall be ordered or Witnesses to agreed in any rule or order of reference, or submis- on oath. sion containing an agreement, to make it a rule of court, that the witnesses shall be examined upon oath, the arbitrator or umpire, or any one arbitrator, may and are required to administer an oath to such witnesses, or to take their affirmation, in cases where affirmation is allowed, by law instead of oath; and perjury may be assigned on such oath or

affirmation. (k)

The arbitrators are bound by the same rules of Rules of evievidence which govern the courts of law. (1) The which arbiarbitrator, under an order of reference with the trators are bound. clause, authorising the arbitrator to examine the parties to the suit on oath if he thinks fit, empowers him to examine the plaintiff to a point upon which

(j) Prior to this statute, the court of K. B. refused to compel a witness to attend before an arbitrator, although the reference was by order of nisi prius.—Wansel v. Southwood, 4 M. & R. 359.

(k) The court will not set aside an award on the ground of the witnesses

not having been examined on oath, if no such objection was made at the time of the examination.—Ridout v. Pye, 1 B. & P. 91.
(1) Att. Gen. v. Davison, M'Clel. & Y. 160.

no other evidence can be adduced on the same side.(m) All the witnesses of the party, against whom the award is made, must have been examined, and in his presence, or it will be a ground for setting aside the award; but it must be made clearly to appear. (n) The court will not set aside the award of a barrister on the ground of his admitting an incompetent witness.(o) Nor where he rejects a witness as inadmissible in point of law.(p) The arbitrator may use the judgment of another person.(q) Or he may take the opinion of a third person as evidence. (r) It seems that an arbitrator, on a general reference of all matters in difference, may go further than the court could to do complete justice; and, therefore, may relieve against a harsh right which, in a court of justice, would prevail.(s)

(1.)

An Award between Landlord and Tenant.(t)

Arbitrators.

Recital.

To all to whom these presents shall come, we, E. F., of, &c., and G. H., of, &c., send greeting; WHEREAS certain differences and disputes having arisen between A. B., of, &c., and C. D., of, &c., of and concerning the occupancy, management, and cultivation, by the said C. D., as tenant, of a farm,

(m) Warne v. Bryant, 5 D. & R. 301. 3 B. & C. 590.
(n) Beddington v. Southall, 4 Price, 232. But is apprehended that it will be necessary to show that such examination was, in point of fact, re-

quired, or that the witness is a requisition.

(o) Perryman v. Steggall, 9 Bing. 679. 3 M. & S. 93.

(p) Campbell v. Twemlow, 1 Price, 81.

(q) Emery v. Wase, 5 Ves. jun. 848.

(r) Hopcroft v. Hickman, 2 Sim. & Stu. 130.

(s) Knox v. Symonds, 1 Ves. jun. 369; and see Craven v. Craven, 1 Moore, 403. 7 Taunt, 644. And it appears that if he chooses to put the law out of the question, and to award the payment of a conscientious demand arising out of a transaction which he knows to be illegal, he may demand arising out of a transaction which he knows to be illegal, he may do so.—Delver v. Barnes, l Taunt. 48.

(t) An award drawn up in the shape of an opinion was held good.—Matson v. Trower, R. & M. 17. In fact, no precise form of words is necessary to constitute an award; it is sufficient if the arbitrator express by it a decision upon the matter submitted to him; but a mere suggestion by letter of an arbitrator, and not a decided opinion, was not a good award.—Lock v. Vulliamy, 2 Nev. & M. 336. 5 B. & Adol. 600. If the award purports to be made by four, and is only executed by three of them, it is void.—Thomas v. Harrop, 1 Sim. & Stu. 524. The award may be prepared by the religious to one of the nextice.—Estherstone v. Cooper 9 pared by the solicitor to one of the parties.—Fetherstone v. Cooper, 9 Ves. jun. 67.

lands, and premises, called, &c., the property of the said A. B., and also as to the payment of the due proportion of the amount or sum of money paid, laid out, and expended, by the said A. B., for ploughing, harrowing, and manuring with lime, and sowing parts thereof, up to the 25th day of March last, previous to the time of the said C. D. becoming the tenant thereof, and also concerning the amount of rent to be paid by the said C. D., for the said farm, to the said A. B., and as to the mode of cultivation of the same farm; AND WHEREAS, the Recital of bonds. said A. B., by a bond dated the, &c., under his hand and seal, became bound to the said C. D., in the penal sum of, &c., and the said C. D. became bound to the said A. B. in the like penal sum, with conditions written under the same several bonds, that, &c. (state the condition of the bond so far as relates to the award, and also state the power, if any, for enlarging the time for the arbitrators making their award); AND WHEREAS, we, the said Enlarge-(arbitrators), in and by an indorsement on the ment of time said bond, did, by a memorandum in writing under our hands, enlarge the time for making our award, until, &c., pursuant to the said recited power. (u)

(a) When an arbitrator has power to enlarge the time to any other day, he may enlarge it more than once.—Payne v. Deakle, 1 Taunt. 509; and see 2 Chit. 45; also, see Barret v. Parry, 4 Taunt. 658. Although the time for making the award has not been enlarged, the objection is waived by the parties proceeding with a knowledge of the fact.—Lawrence v. Hodgson, 1 Y. & I. 16; and see in re Hick, 8 Taunt. 694. The time for making an award being limited to the 18th of April, with power to enlarge the time, but not stating how, the arbitrator, at a meeting on the 16th, in the time, but not stating how, the arbitrator, at a meeting on the 16th, in the presence and with the consent of all parties, appointed the 29th of June for a further meeting; this was held to be a sufficient enlargement of the time.—Burley v. Stephens, 1 Mees. & Wels. 156. 4 Doul. P. C. 255, 770. The power under 3 and 4 W. IV., c. 22, s. 39, to enlarge the time for an arbitrator to make his award, in general is not confined to cases where there has been a revocation of the submission.—Id. And make this section, the court or judge has the power to enlarge the time. under this section, the court or judge has the power to enlarge the time, although the order of reference does not give such power, and there has been no revocation of the arbitrator's authority.—Potter v. Newman, 2 C. M. & R. 742. 4 Dowl. P. C. 504. 1 Tyr. & G. 29.

The award is considered as published when the parties have notice that

it is ready for delivery on payment of the reasonable charges.—Musselbrook v. Dunkin, 9 Bing. 605. 2 M. & S. 740. 1 Doul. P. C. 722. An award, though not actually delivered within the time, is complete if made in writing, and ready to be delivered on the day appointed.—Brown v. Vawser, 4 East, 584. Although the award do not recite the enlargement will time wet if made within analytime it is good. of time, yet, if made within such time, it is good.—George v. Lously, 8

Award.

Now we, the said (arbitrators), having taken upon ourselves the burden of the arbitration, and having heard and duly considered all the allegations and evidence of the said respective parties, of and concerning the said matters in difference, and so referred as aforesaid, do make this our award in writing, of and concerning the said matters in difference, and so referred as aforesaid; and do hereby award, order, determine, and direct, that the said C. D., his executors or administrators, do and shall well and truly pay, or cause to be paid, unto the said A. B., his executors or administrators, on, &c., at, &c., between the hours of, &c., the sum of £ —, of good and lawful money of Great Britain; AND I do further award, order, and direct, that each of them, the said A. B. and C. D., shall bear and pay his own costs incurred by him in and about the said submission and reference; and that the sum of \mathcal{L} ——, being the amount of the other costs attending the said submission and reference, and of making this award, shall be paid by the said A. B., to me, upon demand; and that the sum of £ being one moiety of the said sum of £ —, shall, after such payment as aforesaid, be paid by the said C. D., to the said A. B., on demand; AND we do further award, order, and direct, that upon payment of the said sums of £ —, to the said A. B., as aforesaid, they, the said A. B. and C. D., shall and do execute and deliver to each other, at the expense of the party requiring the same, mutual general releases in writing, of all and every matter heretofore in difference between them, and so referred to us aforesaid.

East, 13. Where no time was mentioned in the submission for the arbitrators to make their award, a plea to an action of debt on the award, that the same was not made within a reasonable time, was adjudged ill.—Curtis v. Potts, 3 M. & S. 145. The absence of the date or time is immaterial, it being considered as equivalent to a general authority to be executed within a reasonable time, (in this case a blank was left for the date in the submission).—See Macdougall v. Robertson, 1 M. & P. 147. 2 Y. & I. 11. 4 Bing. 435.

(2.)

Award pursuant to a Clause of Arbitration contained in Articles for a building Agreement.

To all to whom these presents shall come, we, Recital of A. B., of, &c., and C. D., of, &c., send greeting; of agree-WHEREAS, by articles of agreement bearing date, ment, and clause of re-&c., and made between &c.; (here recite the arti-ference. cles so far as they relate to the matters in arbitration, and particularly the clause of arbitration therein;) AND WHEREAS, the said E. F. hath Building. erected and built the said house, buildings, and premises, in pursuance of the said agreement; but differences and disputes have arisen touching the expenses of such building, and as to the sums laid out and expended by the said E. F., and as to the several sums advanced by the said G. H. to him, and other matters touching the said building and premises. Now know YE, that we, the said A. B. Operative and C. D., having fully viewed and inspected the award. said building, and having heard the allegations and proofs of both the said parties, and their respective witnesses, concerning the several matters referred to us, do hereby find, award, order, declare, and determine, that there is justly due and owing to the said E. F., besides the several sums of money already paid to him by the said G. H., on account of the said building, the full sum of £ ---; and we do hereby further award, that the said sum of £ --- shall be paid by the said G. H., his executors, administrators, and assigns, to the said E. F., his executors, administrators, or assigns, on the 25th day of March next, at the house of, &c., called or known by the name or sign of, &c., at the hour of ten o'clock in the forenoon of the same day; and we do hereby further award, that the sum of, &c., being the expense and charges incident to the arbitration, shall be paid by the said E. F. and G. H., in equal moieties; (v) AND that, Parties to

(v) Arbitrature cannot award the costs of reference unless such power be given them for that purpose in the submission.—1 Cowp. 127. Whitehead

execute mu- upon payment of the said sum of £ ----, we do hereby award and direct, that the said parties shall duly execute and deliver to each other mutual releases in writing, of all and every matter heretofore in difference between them, and so referred to us as aforesaid, if and when either party shall require the same; and that the expenses of such release shall be paid by the party requiring the same. In witness, &c.

> v. Firth, 2 E. 166. If no direction be given respecting the costs, they are to be paid by both parties equally.—Grove v. Cox, 1 Taunt. 165. It should be provided in the submission that the costs shall be in the discretion of the arbitrator.—See Tidd's Pract. 825.

OBSERVATIONS AND CASES.

But Award how An award may be by parol or by $\operatorname{deed}(w)$ if by the terms of the submission the award must be under the hands and seals of the arbitrators, then sealing only is not sufficient. (x) Upon a bond for the performance of an award with these words, "So as it be made in writing under the hands of the arbitrators," by such a day, the declaration in the action averred that the arbitrators did in due manner, and within the time limited, duly make their award in writing. This declaration was held (in error) insufficient, because it did not allege that it was under their hands.(y) Parties binding themselves jointly and severally to perform an award, each is answerable for the obedience of the others. (z) If the award limits no time for performance, it must be construed as reasonable time.(a) In the absence of the date to an award, its delivery must be adopted in its stead. (b)

The requisites of an award are, that it be con- The requisistent with the terms of the submission, certain, sites of an award. final, and not contrary to law.(c) But a prima facie uncertainty, or want of conclusiveness in an award, does not vitiate if it be capable of being rendered certain or conclusive.(d) The court will favour the construction which renders the award certain and final. (e) An affidavit of one of the arbitrators will not be admitted to explain their intention, where the terms appear clear upon the award. (f) An award that A. or B. shall do a

(w) 1 Salk. 75.

(a) Jenk. 136.

(e) Wood v. Griffiths, 1 Swans. 52. 1 Wils. C. C. 34. (f) Gordon v. Mitchell, 3 Moore, 241.

⁽x) Palm. 109. (y) Everard v. Paterson, (in error.) 2 Marsh, 304. 6 Taunt. 625. (z) Mansell v. Burridge, 7 T. R. 352.

⁽b) Armit v. Breame, Ld. R. 1076. (c) 5 Co. 77, b. 780. Roll Abr. 263. Bac. Ab. 218. (d) Aitcheson v. Carger, (in error,) 9 Moore, 381. 2 Bing. 199. M'Clel. 367. 13 Price, 639.

certain act, is bad for uncertainty.(g) submission be of two distinct matters in difference, the arbitrator, by omitting to decide one of them, vitiates the whole award.(h) An award that plaintiff had been overpaid a certain sum, could not be enforced by attachment. (i) On an award finding a debt, but containing no order to pay, an attachment was refused.(j) An award may be for money to be paid to a stranger for the use of one of the parties to the submission.(k) In a submission of all matters in difference, although the defendant make claims which might be subject of cross actions, and the award finds that plaintiff had no cause of action against the defendant, it was held good, as all matters between the parties were re-An award that the sum of £230 is due ferred.(l) from defendants to plaintiffs, and that out of that sum defendants should pay to the arbitrators £93, being the expenses for preparing the agreement of reference, and their award, and for their charge, trouble, and attendance, on the reference and arbitration, and certain costs which they awarded to be paid to the solicitor of the plaintiffs, in respect of certain actions mentioned in the agreement of reference, leaving the sum of £136, which they award to be paid to plaintiffs;—this award was held void for uncertainty, in directing a sum in gross to be paid to the arbitrators for the objects above mentioned, without specifying the particular sum to be appropriated to each object.(m) an award state that the decision was founded upon certain facts set out in the award, the court will not infer that the decision of the arbitrator proceeded solely upon those facts.(n) If by the submission, "all the costs are to abide the event of the award,"

⁽g) Lawrence v. Hodgson, l Y. & I. 16. (h) Randall v. Randall, 7 East, 81. 3 Smith, 90. (i) Thorton v. Hornby, 8 Bing. 13. 1 M. & Scott, 48. 1 Dowl. P. C.

⁽i) Thorton v. Hornby, 8 Bing. 13. 1 M. & Scott, 237.

(j) Edgell v. Dallimore, 3 Bing. 634. 11 Moore, 541.

(k) Snook v. Hellyer, 2 Chitt. 43.

(l) Hayllar v. Ellis, 3 M. & P. 553. 6 Bing. 225.

(m) Robinson v. Henderson, 6 M. & S. 276.

m) Robinson v. Henderson, 6 M. & S. 276. (n) Lancaster v. Hemmington, 5 Nev. & M. 538.

the arbitrator has no power over the costs.(o) An award is bad which orders money to be paid to the arbitrator, to be applied for certain specified demands, (part of the matters submitted,) although it may appear to be for the benefit of the parties submitting.(p) If, from reading an award, it clearly appear that the arbitrator intended to leave a particular question of law open, the court will consider it, although in terms the arbitrator may, in one part of his award, have determined it.(q)When mutual and general releases are awarded, the Mutual rearbitrator is deemed to have adjudged and finally leases. decided upon all matters, and the general release would be an answer to any action or claim founded

upon them.(r)

The award should be engrossed on a thirty-five Execution shillings stamp paper, and signed by the arbitrator, of the award in the presence of a witness. (s) It is advisable to give the original award to the party in whose favour it is made, and merely copies to the others, unless they should require stamped originals.(t) When the award is made, the arbitrator should Notice. give notice to the attorneys of the parties that it is ready, and that each of them may have his part on the day therein specified, on payment of the ex-After the award is delivered, or after Delivery. penses.(u) notice given by the arbitrator of it being ready for delivery, no mistake in a material part of it, as in the calculation of figures, or in the sum awarded, &c., can be corrected, unless with the consent of both the parties; but it seems a mistake in an immaterial part may. (v)

(v) See Frew v. Burton, 1 C. & M. 533.

⁽o) Boodle v. Davis, 4 Nev. & M. 788. 3 Adol. & Ellis, 200. 1 Har. & Woll. 420.

⁽p) In re Mackay, 2 Adol. & Ellis, 356.

(q) Sherry v. Oke, 3 Doul. P. C. 349. 1 Har. & Woll. 119.

(r) Wharton v. King, 2 B. & Adol. 528.

(s) If the award contain more than thirty folios, (of seventy-two words each,) it will require for every fifteen folios more a further stamp of £1 5s.—See 56 G. IV., c. 184; and see Godson v. Forbes, 6 Taunt. 171.

(t) Godson v. Forbes, 6 Taunt. 171.

(x) This notice is deemed the publication of the award, and it is according to the award.

⁽w) This notice is deemed the publication of the award, and it is so though the arbitrator demand unreasonable charges.

BARGAIN AND SALE.

A BARGAIN and sale of goods is, where a man makes a contract with another for the sale of goods or chattels, and, at the same time, makes the sale of them; and in respect to goods or other personalties, is precisely of the same kind in operation, and technical import as a bill of sale; but where the instrument has reference to things of a real nature, or such as savour of the realty, (w) it is usually styled a bargain and sale.(x)

Bargain and Sale of timber Trees standing. with Power to cut down and carry away the same.(y)

Parties.

Recital of contract.

This indenture made the —— day of, &c., BE-TWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part; WHEREAS, the said C. D. hath contracted and agreed with the said A. B. for the purchase of the timber trees, now standing on, &c., as hereinafter mentioned, at or for the price or sum of, &c., and with full power to cut down and carry away the same, upon the terms, covenants, and conditions, hereinafter mentioned. (z)Now this indenture witnesseth, that, in pursuance of the said agreement, and for carrying the same into effect, and in consideration of the sum of £ ---, &c., to the said A. B., in hand, paid by the said C. D., at the time of the execution of these presents, the receipt whereof is hereby acknow-Bargain and ledged, he, the said A. B., doth grant, bargain, and sell, unto the said C. D., his executors, administra-

Witnessing part.

Consideration.

sale.

(z) If sold by auction, see recital, p. 101, n. (p).

⁽w) This phrase is used by Blackstone in his Com. v. ii. p. 386.
(x) Com. Dig. tit. Bargain and Sale. (See Bill of Sale.)
(y) See agreement, p. 98; and see conditions for the sale of timber for additional stipulations or covenants.

A. B. is in possession of a messuage or tenement, A. B. being situate, &c., as tenant to R. S., of, &c., under a sion of the yearly rent of £ —, payable quarterly; AND messuage. WHEREAS, the said R. S. hath verbally agreed to the verbal grant a lease of the said messuage or tenement to agreement the said A R for twenty-one years, from the _____ the said A. B. for twenty-one years, from the day of ----, determinable, &c., at the option of the said A. B.; AND WHEREAS, the said A. B. hath contracted with the said C. D. for the sale to him of the household furniture, now being in or upon the said messuage or tenement, in the sche-Testatum. dule or particular thereof hereunder written, at or Considerafor the price of £——.(a) Now this indenture tion.

WITNESSETH, that for and in consideration of, &c., Bargain and to the said A. B., paid by the said C. D., the receipt, sale of goods &c., he, the said A. B., hath bargained, sold, and assigned, and by these presents doth bargain, sell, and assign, all and singular the household goods, furniture, and things, mentioned and specified in the said schedule, or particulars thereof hereunder written; AND also, all the estate, right, title, interest, property, claim, and demand, whatsoever, of him, the said A. B., into or out of the And the full said messuage or tenement and premises, with the agreement appurtenances, and the full benefit and advantage for lease. • to arise and accrue from the said promise or agreement, made or entered into by the said A. B. and C. D., for such a lease thereof as aforesaid, or for any other lease thereof as aforesaid; TO HAVE, hold, receive, take, and enjoy, the premises hereby assigned, or intended so to be, unto and by the said C. D., his executors, administrators, and assigns, for his and their use absolutely.(b) In witness, &c.

(a) In respect to the specific performance of a verbal agreement for a

lease, under the circumstances of taking possession, and other acts of performance, see the case of Morphett v. Jones, 1 Wils. C. C. 97.

(b) Covenants may be added, that the said A. B. hath done no act to incumber; and for further assurance, or a warranty, may be added; but in the sale of goods such covenants are implied. For a memorandum of delivery of possession see "Bill of Sale."

(3.)

Bargain and Sale of copyhold Property under a Fiat in Bankruptcy (short Form).

Parties.

This indenture made the —— day of, &c., BE-TWEEN A. B., Esq., (c) (the commissioner of his majesty's court of bankruptcy, acting under a fiat in bankruptcy awarded and issued against R. S., of, &c.,) of the first part; C. D., of, &c., (the official assignee of the estate and effects of the said R. S., appointed by the said A. B., to act with the assignees of the said R. S.,) of the second part; E. F., of, &c., and G. H., of, &c., (assignees of the estate and effects of the said R.S., duly chosen under the said fiat, on the —— day of, &c.,) of the ·third part; the said R. S., of the fourth part; and Witnesseth. (purchaser), of the fifth part; WITNESSETH, that in pursuance of a sale by auction at, &c., in, &c., on the —— day of, &c., now last past, by the order of said E. F. and G. H., and in consideration of the sum of £ —, paid by the said (purchaser), at the time of the sale, by way of deposit, (he being the highest bidder there,) and of the further sum of £ —, to the said C. D., in hand, well and truly paid at the time of the execution of these presents, the receipt whereof (in full for the said. purchase money) the said C. D., and also the said E. F. and G. H. and R. S., do, and each and every of them doth, hereby acknowledge, and of and from the same, and every part thereof, do, and each and every of them doth, acquit, release, and discharge, the said (purchaser), his heirs, executors, administrators, and assigns, for ever, by these presents; AND also, in consideration of the sum of five shil-

Consideration.

Bankrupt act

⁽c) By section 68 of the bankrupt act, 6 G. IV., c. 16, commissioners are empowered to convey copyhold estates immediately to a purchaser, whereby the fine for the admission of the assignees is saved; and by section 69 it is enacted, that if a vendee offer a competent fine to the lord, and the lord refuses, and will not admit him, he may enter. By the 3 and 4 W. IV., c. 74, the disposition by the commissioner of the copyholds of the bankrupt, where his estate is not equitable, is to have the same operation as a surrender; and the person to whom the disposition is made, may claim to be admitted upon paying the fines and dues.

lings, of lawful money of Great Britain, to each of them, the said E. F., G. H., and R. S., in hand, paid by the said (purchaser), at the time of the execution of these presents, the receipt whereof is hereby acknowledged, he, the said A. B., in execu-Bargain and tion of the said fiat, and by virtue and in execution sale by commissioner. of the several statutes now in force concerning bankrupts, particularly an act of parliament passed in the 3rd and 4th years of his late majesty William the Fourth, intituled, "An Act for the Abolition of Fines and common Recoveries, and for the substitution of more simple modes of Assurance," doth by these presents, (to the extent of the power vested in him as such commissioner as aforesaid,) bargain, sell, order, and dispose of; and the said C. D., Grant and E. F., G. H., and R. S., do, and each and every of confirmation of them (so far as he lawfully can or may) doth, signees and bareby grant bargain sell and confirm unto the hereby grant, bargain, sell, and confirm, unto the said (purchaser), his heirs and assigns, for ever, ALL that customary copyhold messuage, &c., now or late of him, the said R. S., and also houses, &c., and all the estate, &c., now or late of him, the said R. S., of, in, to, or out of, the said messuage, &c., hereditaments, and premises, hereby bargained and sold, and every part and parcel thereof; TO HAVE Habendum. AND TO HOLD the said messuage, &c., hereditaments, and all and singular the premises hereby bargained and sold, and every part and parcel thereof, with the appurtenances, unto and to the use of the said (purchaser), his heirs and assigns, for ever; to the intent that the said (purchaser), as the purchaser thereof, or his heirs, may be admitted tenant or tenants thereof, at the will of the lord, and by and under the rents, suits, and services, therefore due, and of right accustomed to be paid, done, and performed; AND the said A. B., Covenants C. D., E. F., and G. H., for themselves severally sioners and and respectively, and for their several and respective assignees that they heirs, executors, and administrators, and not the have not inone for the other of them, or the heirs, executors, cumbered. or administrators, or the acts, deeds, and defaults,

of the other of them, but each of them for himself only, and his own heirs, executors, and administrators, and his and their own acts, deeds, and defaults,

only, do covenant, promise, and agree, with and to the said (purchaser), his heirs, executors, administrators, and assigns, that they, the said A. B., C. D., E. F., and G. H., have not nor hath either of them, at any time heretofore, made, done, committed, executed, or suffered, any act, deed, matter, or thing, whatsoever, whereby the said messuage and hereditaments is or may be in any manner incumbered; AND the said R. S. doth hereby for for the title. himself, his heirs, executors, and administrators, covenant, promise, grant, and agree, to and with the said (purchaser), his heirs and assigns, in manner following, (that is to say,) that for and notwithstanding any act, deed, matter, or thing, whatsoever, by them, the said A. B., C. D., E. F., G. H., and R. S., or any or either of them, they, the said A. B., C. D., E. F., G. H., and R. S., or some or one of them, now have or hath in themselves or himself good right to grant, bargain, sell, and convey, the said messuage, &c., with the appurtenances, unto the said (purchaser), his heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents; AND that it shall and may be lawful to and for the said (purchaser), his heirs and assigns, immediately after the execution of these presents, to enter upon and enjoy the said messuage and hereditaments hereby granted, bargained, and sold, with the appurtenances, and to receive and take the rents and profits thereof, for his and their own use and benefit, without any interruption whatsoever, from or by the said R. S., or his heirs, or any person or persons claiming through or in trust for them; AND that free and clear, or otherwise, by the said R. S.,

> his heirs, executors, or administrators, well and sufficiently indemnified of, from, and against, all estates, titles, troubles, liens, charges, and incumbrances, whatsoever, made, done, or permitted, by

the said R. S., or any person claiming through or in trust for him, subject only to the rents, customs, and services, therefore due, and of right accustomed to be paid and performed in respect of the said messuage, hereditaments, and premises; AND moreover, that he, the said R. S., and his heirs, and all persons whosoever, claiming through or in trust for him, shall and will, at the request, costs, and charges, of the said (purchaser), his heirs and assigns, make and perfect all further assurances that may be necessary for the more effectually or satisfactorily conveying the said messuage and hereditaments hereby granted, bargained, and sold, with the appurtenances, unto the said (purchaser), his heirs and assigns, according to the true intent and meaning of these presents, as by the said (purchaser), his heirs or assigns, or his or their counsel in the law, shall be lawfully and reasonably devised, and tendered to be executed. In witness, &c.

BILL OF SALE.

What a bill of sale is.

A BILL of sale is a solemn contract under seal, whereby a man passes the right or interest that he hath in goods and chattels; for if a man promises or gives any chattels without valuable consideration, or without delivering possession, this doth not alter the property, because it is nudum pactum unde non oritur actio; but if a man sells goods by deed under seal duly executed, this alters the property between the parties, though there be no consideration, or no delivery of possession, because a man is estopped to deny his own deed, or affirm any thing contrary to the manifest solemnity of contracting.(d) But by statute 13 Eliz. c. 5, it is enacted, that all fraudulent conveyances (e) of lands, goods, and chattels, to avoid the debt or duty of another, shall (as against the party only whose debt or duty is so endeavoured to be avoided) be utterly void, except grants made bond

Statute 13 Eliz.

(d) Yelv. 196. Cro. Jac. 270. Brown, 111. 6 Co. I8. 1 Bac. Abr. tit.

Bill of Sale.

⁽e) Fraud, in a legal sense, means an act unwarranted by law to the prejudice of a third person.—Harman v. Fisher, Loft. 472. Cowp. 117. Acts which are valid between themselves may be fraudulent, and void against third persons.—Id. A false or collusive act is conclusive against the parties to the fraud, although all the world beside may be permitted to controvert it.—Loft. 426. Fraud will vitiate any transaction, though the principal do not personally partake of any part in the fraud, if his agent do.—Doe d. Wills v. Martin, 4 T. R. 39. No man can be allowed to allege his own fraud to avoid his own deed.—Watts v. Brookes, 3 Ves. jun. 613. Therefore, where a deed of conveyance of an estate from one brother to another was executed to give the latter a colourable qualification to kill game; held that, as against the parties to the deed, it was valid, and was sufficient to support an ejectment for the premises.—Doe d. Roberts v. Roberts, 2 B. & A. 367. Fraud in obtaining the delivery of a lease, the execution of which was obtained bona fide, affects it equally, as if used to obtain the execution: delivery making it a lease.—Abingdon (Lord) v. Butler, 1 Ves. jun. 208. A court of equity will not carry into execution a voluntary deed, without either valuable or meritorious consideration.—Colman v. Sarel, 3 Bro. C. C. 12. When a deed is made by a prisoner on the eve of his trial for a capital offence, which assigns his property to another, it cannot be supported without proof of consideration.—Shaw v. Bran, 1 Stark, 319. And where a deed was made by a person in custody on a charge of felony, conveying all his property in trust for his wife for life, and then in trust for his son, and on the next day was convicted of the felony, this conveyance was void as against the crown.—Morewood v. Wilkes, 6 C. & P. 144.

fide, and on good (which is construed a valuable) consideration; and that all parties to such fraudulent conveyance, who being privy thereunto, shall wittingly justify the same to be done bond fide, and on good consideration, or shall alien or assign any lands, lease, or goods, so to them conveyed as aforesaid, shall forfeit one year's value of the lands, lease, rent, common, or other profit, out of the same, and the whole value of the goods; and being thereof convicted, shall suffer half a year's imprisonment, without bail; the forfeiture to be divided between the queen and the party grieved.

(1.)

Bill of Sale of Goods from Tenant to Landlord, in Satisfaction of Rent, to save the Expense of Distress.

THIS indenture made the —— day of, &c., BE- Parties. TWEEN (the tenant), of, &c., of the one part, and (the landlord), of, &c., of the other part; WHEREAS, Recital of the said (tenant) is indebted to the said (land-being inlord) in the sum of, &c., for one year and a half's rent, ending at, &c., last, for the messuage and farm situated, &c., and which the said tenant is not able to pay in money; AND WHEREAS, the household Appraisegoods and furniture, and all other the goods and ment. chattels, utensils, implements, effects, and things, belonging to the said (tenant), upon the said premises, have been appraised and valued by two sworn appraisers, at the price or sum of, &c., as the full value thereof; AND WHEREAS, the said (landlord), in order to save the trouble and expense of a distress, hath agreed to accept an assignment from the (tenant) of the said household goods and furniture which are hereinaster mentioned, in full satisfaction of the said debt or sum of £ ----, due to him, the NOW THIS INDENTURE WIT- Witnessing said (landlord). NESSETH, that in pursuance of the said agreement, part. and in consideration of the said sum of, &c., so due and owing to the said (landlord) as aforesaid, and

which the said tenant doth hereby admit and acknowledge, and in consideration of five shillings. of lawful money of Great Britain, by the said

(landlord) to the said (tenant), in hand, paid at the time of the execution of these presents, he, the

()perative part.

Warranty.

said (tenant), doth by these presents, grant, bargain, sell, assign, and set over, unto the said (landlord), his executors, administrators, and assigns, ALL and singular the household furniture, beds, bedding, plate, china, linen, books, pictures, and other the goods, chattels, and effects, mentioned or described in or by the inventory or schedule thereof hereunder written, (or hereunto annexed,) and all the right, title, interest, claim, and demand, whatsoever, of him, the said (tenant,) Habendum. in or to the same, and every part thereof; TO HAVE, hold, and enjoy, the said household goods, furniture, chattels, and other effects, hereby bargained, sold, and assigned, with their, and every of their, rights, members, and appurtenances, unto and by the said (landlord), his executors, administrators, and assigns, to and for his and their own proper use and benefit; AND the said (tenant) for himself, his executors and administrators, all and singular the said household goods, furniture, chattels, and other effects, unto the said (landlord),

his executors, administrators, and assigns, and against all and every other person or persons whosoever, shall and will warrant and for ever defend.

(f) The delivery of possession of the goods may be included in the attestation of the deed, thus: "Signed, sealed, and delivered, by the above Delivery of possession. (or within) named A. B., (and at the same time full possession of the goods, chattels, and effects, above (or within) mentioned, was had and taken by the above (or within) named C. D., of one chair delivered to him by the said A. B., in the name of the whole of the said goods, chattels, and effects,) in the presence of," &c.

In witness, &c.(f)

(2.)

Bill of Sale of Goods distrained for Rent, from the Landlord and Bailiff, in which the Constable and sworn Appraisers are made Parties, for testifying the Proceedings under the Distress.

This indenture made, &c., Between A. B., (the Parties. landlord,) of, &c., C. D., (the bailiff making the distress,) of, &c., of the first part; E. F., (the constable,) of, &c., of the second part; G. H. and J. K., of, &c., (the two sworn appraisers,) of the third part; and L. M., of, &c., (the purchaser,) of the fourth part; whereas, there being justly due Recital of and owing from N.O., of, &c., to the said A. B., rent due. the sum of £ ----, for one year's rent, ending at, &c., last, for the house and premises situated, &c., and occupied by the said N. O., as tenant to the said A. B., and the same not having been paid by the said N. O., he, the said C. D., did, on the --- Distress by day of, &c., last, (by virtue of an authority from C.D. for the rent upon the said A. B., for such purpose given,) enter the goods. upon the said house and premises, and make distress of the goods and chattels there being for the said rent, so due and owing as aforesaid, and there found the goods and chattels following, (that is to say,) (set forth the particulars of the goods,) (or "particularised in the schedule hereunder written, or hereunto annexed, and did deliver due notice thereof to the said N.O., at the said dwelling-house, and which he, the said C. D., doth hereby testify and declare"); AND WHEREAS, the Appraisesaid C. D. did on the —— day of, &c., cause the ment and said goods and chattels to be appraised and valued valuation. by the said G. H. and J. K., upon their oaths, administered by the said constable; and such appraisement and valuation of the same goods and chattels so distrained has been made by them at the sum of \mathcal{L} —, which they do hereby acknowledge, testify, and declare; AND WHEREAS, the said goods and chattels are yet unreplevied; AND WHEREAS, That goods

are unreplevied.

Agreement for sale.

Witness.

Operative part.

the said C. D., with the consent of the said A. B., and with the advice and approbation of the said (appraisers), hath agreed with the said (purchaser) for the sale to him of the said goods and chattels, at the said sum of £ ---, being the amount at which the same has been so appraised at as aforesaid, towards satisfaction of the said rent, being the best price that can be had or gotten for Now this indenture witnesseth, that in pursuance of the said agreement, and in consideration of the said sum of £ —, to the said (landlord), in hand, well and truly paid by the said (purchaser), at the time of the execution hereof, by the request, and by the direction, of the said (bailiff), testified by his being a party to and executing these presents, the receipt whereof is hereby acknowledged, they, the said (landlord) and (bailiff) do, and each of them doth, bargain, sell, assign, and set over, unto the said (purchaser), his executors, administrators, and assigns, all and singular the said household goods, chattels, and effects, so distrained and appraised as aforesaid, and particularised, &c., with their appurtenances; TO HAVE AND TO HOLD the same goods, chattels, and effects, unto and by the said (purchaser), his executors, administrators, and assigns, as and for his own proper goods, chattels, and effects, for In witness, &c. ever.

(3.)

Bill of Sale of household Goods and Furniture from Tenant to Landlord, by Way of Security for Rent, and Money due and owing upon the Balance of an Account, including a Power of Attorney for delivering Possession of Goods.

Parties.

Recital of money due.

THIS indenture made the —— day of, &c., BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part; WHEREAS, the said C. D. stands indebted unto the said A. B. in the sum of £——, upon the balance of account for rent due

and owing, and for goods sold and delivered, and the said A. B. having threatened to take proceedings by distress or other means by action for recovery thereof, the said C. D., in order to induce the said A. B. to forbear any proceedings, and to avoid litigation, hath agreed to assign and make over all and singular his household goods and chattels unto the said A. B., as a security for his said money, in the manner hereinafter expressed. (g)Now this indenture witnesseth, that in pursu- Testatum. ance of the said hereinbefore recited agreement, on the part of the said A. B. in this behalf, and in consideration of the said sum of £---, of lawful money of Great Britain, being so due and owing from the said A. B. to the said C. D., as hereinbefore is mentioned, and in consideration of the sum of five shillings, of lawful money, to the said A. B., in hand, paid by the said C. D., upon or immediately before the execution of these presents, the receipt whereof the said A. B. doth hereby acknowledge, he, the said A. B., doth by these presents, bargain, Operative sell, assign, transfer, and set over, unto the said part. C. D., his executors, administrators, and assigns, ALL and singular the household goods, furniture, Chattels. implements, stock in trade, goods, chattels, and effects, whatsoever, of him, the said A. B., in and about the dwelling-house and shop in the town of, &c., and all right, title, interest, property, possession, claim, and demand, whatsoever, of him, the said A. B., of, in, or to, the same effects; TO HAVE AND TO HOLD the said household goods, chattels, and effects, hereinbefore assigned, or expressed, and intended so to be, unto and by the said C. D., his executors, administrators, and assigns, absolutely

⁽g) If a bond is given as a collateral security, or a warrant of attorney, say, "And whereas, the said A. B. hath executed a bond or obligation (or warrant of attorney) in writing, under his hand and seal, dated, &c., in the penal sum of, &c., with a condition (or defeazance) thereunder written, for making void the same, on payment of the sum of £ ——, and interest, after the rate of £4 per cent. per annum, on the —— day of, &c., next ensuing; and whereas, it hath been agreed, that for the better securing the rate of the seid are a feet annum. ing the payment of the said sum of, &c., the said A B. shall execute such bill of sale of the goods and effects mentioned in the schedule hereunder written, as hereinafter is expressed."

for ever, (in such and the like manner, and with as full power and authority in all respects, to sell,

convert, and dispose of, the same, as he, the said A. B., his executors or administrators, might or could have in his or their own proper person, if these presents had not been made). Provided ALWAYS, and it is hereby declared, that if the said A. B., his executors or administrators, do and shall pay, or cause to be paid, unto the said C. D., his executors, administrators, or assigns, the said sum of £ —, with interest for the same, after the rate of £4 10s. per cent. per annum, (if a time limited, say, on or before the —— day of, &c., next ensuing,) without deduction, then these presents shall be void, and of none effect; AND the said A. B., for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, with and to the said C. D., his executors, administrators, and assigns, that after default shall be made in payment of the said sum of, &c., (according to the time mentioned in the said proviso,) that he, the said C. D., his executors, administrators, and assigns, shall or lawfully may, peaceably and quietly have, hold, use, possess, and enjoy, the said household goods, furniture, implements, stock in trade, goods, chattels, and effects, and receive and take profits thereof, and of every part thereof, for his and their own use and benefit, without any action, eviction, hindrance, interruption, disturbance, claim, or demand, whatsoever, of or by him, the said C. D., his executors or administrators, or any per-And for fur- son or persons whomsoever; AND that he, the said C. D., his executors or administrators, shall and will at all times hereafter make, do, and execute, or cause and procure to be made, done, and executed, at the expense of the said C. D., his executors, administrators, or assigns, and procure to be

> made, done, and executed, all and every or any such further and other acts, deeds, assignments, and assurances in the law, whatsoever, for the further, better, more perfectly, and absolutely,

Covenant for peace-able possession.

ther assur-

ance.

assigning and assuring the said household goods, furniture, implements, stock in trade, and effects, unto the said C. D., his executors, administrators, and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents, as by the said C. D., his executors, administrators, or assigns, or his, their, or any or other of their, counsel in the law, shall be lawfully and reasonably advised and required. AND THIS INDENTURE ALSO WITNESSETH, that the said A. B. doth, in order that the possession of the said goods may be delivered to the said C. D., by these presents, make, ordain, constitute, and appoint, L. M., of, &c., to be his true and lawful attorney for him, and in his name, to take and have possession of the said household goods, furniture, implements, stock in trade, and effects, or of some part thereof, in the name of the whole and the like possession thereof, or of some part thereof, in the name of the whole, to give and deliver unto the said C. D., his executors, administrators, and assigns, to hold to him, the said A. B., his executors, administrators, and assigns, absolutely for ever, subject as aforesaid, according to the true intent and meaning of these presents, he, the said A. B., hereby ratifying, allowing, and conforming, and agreeing to ratify, allow, and confirm, all and whatsoever his said attorney shall do, or cause to be done, in or about the premises, by virtue of these presents. In witness, (\bar{h}) &c.

⁽h) The memorandum of the delivery of possession by virtue of the power may be as follows: "Be it remembered, that on the —— day of, &c., full possession of the household goods, furniture, chattels, and effects, within mentioned, was had and taken by the within named I. M., as the attorney of the said A. B., of one chair, in the name of the whole of the same effects; and such possession was immediately afterwards given and delivered to the within named C. D., by the said L. M. delivering of the said chair to the said C. D., in the name of the whole of the said goods, chattels, and effects, in the presence of," &c.

OBSERVATIONS AND CASES.

As to bills of sale of chattels.

It is a general rule in the transfer of chattels, that the possession must accompany and follow the deed; therefore, where the conveyance is absolute, the possession must be delivered immediately; if it is made conditional, it will not be rendered void by the vendor's continuing in possession till the condition be performed.(i) But although it be unaccompanied by possession, it is valid against the vendor; and as against a creditor with whose knowledge and assent it was given.(j) Want of possession of the goods will not constitute fraud, the same being only evidence of it. (k) But it is a notorious badge of fraud which ought to be left to the jury.(1) continuance by the assignor in possession of the goods will not protect them from an execution at the suit of a creditor, unless the assignment were notorious, which is a question to be ascertained. (m) And when the assignee has taken possession, but suffers the assignor to execute any act of ownership, it will avoid the bill of sale as against a subsequent bond fide And it is not enough that a person execution.(n)is put to keep possession jointly with the assignor.(o) A sale to a creditor of personal property in embarrassed circumstances, without any change of possession, is valid, unless made with a fraudulent intention to defeat other creditors: the continuance of possession is not conclusive evidence of fraud. (p)

⁽i) Edwards v. Harben, 2 T. R. 587. Dutton v. Morrison, 17 Ves. 197.

⁽j) Steel v. Brown, 1 Taunt. 381.
(k) Martindale v. Booth, 3 B. & Adol. 498.
(l) Martin v. Podger, 2 W. B. 702. 5 Burr. 2631.
(m) Armstrong v. Baldock, Gow. 33; and see Smith v. Russell, 3 Taunt. 400.

⁽n) Paget v. Perchavel, 1 Esp. 205.
(o) Wardall v. Smith, 1 Camp. 333.
(p) Eastwood v. Brown, R. & M. 312. And where a person, pretending to be a purchaser of goods under an execution, leased the goods at a rent to the former owner, who still continued in possession, no money having been proved to be given for the purchase, nor rent paid under the

But, although a valuable consideration be given, yet, if the purchaser was aware of a sequestration in chancery, or of a judgment and execution, the bill of sale will be void. (q)

In mortgages of chattels the delivery of possession is not required, if the possession of the mortgagor is consistent with the terms of the deed.(r)

lense, it was a question for a jury whether the lease was not fraudulent. But under circumstances, the possession of the lessee might have been the possession of the lessor.—Reed v. Blades, 5 Taunt. 212.

(q) Cadogan v. Kennet, Cowp. 432.

(r) Reed v. Wilmot, 5 M. & P. 553. 7 Bing. 577.

BONDS.

The nature of a bond.

A BOND or obligation is a deed or obligatory instrument in writing, whereby one doth bind himself, his heirs, executors, and administrators, to another, to pay a sum of money, or to do some other act.(s)

When termed a specialty.

This security is called a *specialty*, the debt being therein particularly specified in writing, and the party's seal acknowledging the debt or *duty*, and confirming the contract, rendering it a security of a higher nature than those entered into without the solemnity of a seal; and, therefore, bonds or specialties shall be preferred to simple contracts in a court of administration.(t)

Representatives when bound. If in a bond, the obligor binds himself without adding his heirs, executors, and administrators; the executors and administrators shall, nevertheless, be bound, but not the heir.(u)

Legality of conditions.

Conditions of bonds are to be not only lawful but possible; and when the matter or thing to be done, or not to be done, by a condition is unlawful or impossible, or the condition itself repugnant, insensible, or uncertain, the condition is void, and, in some cases, the obligation also.(v)

Three things appear to be essentially necessary to the making a good obligation; that is, writing on paper or parchment, sealing, and delivering. (**v*)

⁽s) Bro. Obl. 67. Shep. Touch. 367.

⁽t) Shep. Touch. 369.

⁽u) Id. (v) 10 Rep. 120.

⁽w) 2 Co. Lit. 5 (a). Noy, 21. 2 Salk. 462. 5 Mod. 281. It seems the signing is not essential to its validity.—2 Cro. Eliz. 642. The bond should not be altered, even in an immaterial part, after delivery, or it will vacate the same.—10 Co. 92. Bull N. P. 267.

(1.)

Replevin Bond.(x)

Know all men by these presents, that we, A. B., of, &c., farmer, C. D., of, &c., grocer, and E. F., of, &c., cordwainer, are held and firmly bound to G. H., Esquire, sheriff of the county of S., in the sum of £ ---, \[double the value of the goods if for rent; and if for damage feasant, a sufficient sum to cover the value of the cattle, or goods distrained,] of good and lawful money of Great Britain, to be paid to the said sheriff, or his certain attorney, executors, administrators, or assigns, for which payment to be well and faithfully made we bind ourselves, and each and every of us, in the whole, our, and each and every of our, heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated this - day of, &c., in the year of our Lord one thousand eight hundred and thirty-eight, and in the first year of the reign of our sovereign lady Victoria, by the grace of God of the united kingdom of Great Britain and Ireland, Queen, defender of the faith, and so forth.

The condition of the above-written obligation is Condition. such, if the above bounden A. B. do appear at the next county court, to be holden in and for the county of, &c., at, &c., on the —— day of, &c., next, and do prosecute his suit with effect, and without delay, against J. K., for the taking and unjustly detaining his cattle, goods, and chattels, to wit, (here particularise the cattle, goods, and chattels, distrained,) and do duly make a return of the said (cattle), goods, and chattels, if return thereof shall be awarded, that then the above-

⁽x) By 1 and 2 Phil. and M. the sheriff is to appoint deputies to make replevins.

written obligation shall be void, and of none effect, or else to be and remain in full force and virtue.(y)

(2.)

Bond as a Security to Landlord by Tenant and his Surety, for Payment of Rent reserved on yranting a Lease.

> Know all men by these presents, that we, A. B., of, &c., and C. D., of, &c., are held and firmly bound unto E. F., of, &c., in the penal sum of £---, of lanful money of Great Britain, to be paid to the said E. F., his executors, administrators, or assigns, or his or their lawful attorney or attorneys, for which payment to be well and truly made, we bind ourselves, and each of us by himself, our, and each of our, heirs, executors, and administrators, by these presents. Dated this - day of ---, 183 .(z)

Recital.

WHEREAS, by an indenture of lease bearing date on or about, (a) &c., and made, or expressed to be

11 G. 2, c

(y) By the 11th G. 2, c. 19, s. 23, in order to prevent vexatious replevins of distresses taken for rent, all sheriffs and other officers having authority to grant replevins, may and shall, in every replevin of a distress for rent, take in their own names from the plaintiff, and two responsible persons as sureties, a bond in double the value of the goods distrained, (such value to be ascertained by the oath of one or more credible witness or witnesses not interested in the goods or distress, which oath the person granting such replevin is thereby authorised and required to administer,) and conditioned for prosecuting the suit with effect; and without delay, and for duly returning the goods and chattels distrained in case a return shall be awarded before any deliverance is made of the distress.

Assignment of replevin bond.

The assignment of the replevin bond is thus: "Know all men by these presents, that I, G. H., Esq., sheriff of the county of, &c., have, at the request of the within named J. K, the avoicant (or "person making cognizance") in this cause, assigned over this replevin bond unto him, the said L. M., pursuant to the statute in such case made and provided. In witness whereof, I have hereunto set my hand and seal of office (or if late sheriff say "seal" only) this — day of," &c.

(z) The above form of the obligatory part of a bond is the usual manner of framing a bond, yet it is not absolutely necessary that it should be in any particular form, as any words which clearly appear to have

be in any particular form, as any words which clearly appear to have been intended for a bond, and the instrument being scaled and delivered, will amount to a good obligation.—Cro. Car. 129. (For a fuller form, see the obligation to the replevin bond.)

(a) Or say, even date with, and executed before, the above-written obli-

gation (as the case may be).

made, between the said E. F. of the one part, and the said A. B. of the other part, ALL that messuage, &c., called, &c., with the several pieces or parcels of land thereunto belonging, &c., with the appurtenances, were demised to the said A. B., for the term of twenty-one years, (determinable, &c.,) at and under the yearly rent of, &c., payable quarterly; AND WHEREAS, for the more sure payment of the said rent, and the performance of the covenants in the said indenture of lease contained, it hath been agreed between the said parties that the said C. D. shall join with the said A. B. in the abovewritten bond or obligation, with the condition hereinaster contained, in respect to the same, and which the said C. D. hath, at the request of the said A. B., consented to do, as the surety for him, the said A. B.(b) Now the condition of the above-Condition. written obligation is such, that if the above bounden A. B. and C. D., or either of them, their, or either of their, heirs, executors, or administrators, do and shall from time to time, and at all times hereafter, during the continuance of the said recited lease, well and truly pay the said rent of, &c., on, &c., (state the times of payment in the lease,) being the several quarterly days and times mentioned in the said indenture of lease, for payment thereof, according to the true intent and meaning of the said in part recited lease, (and do and shall well and truly perform all and every the covenants, clauses, provisoes, and agreements, in the said recited lease contained, on the part and behalf of him, the said A. B., to be observed and performed, according to the true intent and meaning of the same,) then the above-written obligation to be void, or else to remain in full force and virtue.(c)

(c) If the bond be generally for the performance of the covenants in the General lease, say, "Now, &c., that if, &c., do and shall well and truly observe, condition.

⁽b) The surety will not be discharged by the bankruptcy of the lessee, although the bankrupt may have obtained his certificate.—Young v. Taylor, 3 Barn. & Ald. 521. S. C. Moore, 326. 8 Taunt. 315. And it seems he will be liable to breaches of covenant by the lessee, between the date of the commission, and the delivering up the lessee by the lessee under the 75th section of the bankrupt act, 6 G. IV., c. 16.—Tuck v. Tynon, 6 Bing, 321.

(3.)

Bond of Indemnity upon the Assignment of long Leaseholds, to save the Lessee [or Assignor] harmless from the Payment of the Rent, and Performance of the Covenants in the original Lease.(d)

Recital.

Whereas, by virtue of an indenture of assignment dated, &c., and made, or expressed to be made, between, &c., the said C. D. is possessed of, or entitled to, certain leasehold hereditaments, situated, &c., for the residue of a term of ninetynine years, now to come therein, originally granted by a certain indenture of lease dated, &c., and made between, &c., at and under the yearly rent of, &c., and subject to the payment of the rent and the performance of the covenants therein contained; AND WHEREAS, the said E. F. hath contracted with the said C. D. for the purchase of the said leasehold hereditaments, and by an indenture dated, &c., and made between the said, &c., the same premises have been assigned

perform, fulfil, and keep, all and singular the covenants, provisoes, conditions, and agreements, comprised in a certain indenture of lease, dated, &c., (or say, bearing even date with the above-written obligation, as the case may be,) and made between, &c., and which, on the part and behalf of the said A. B., are thereby required to be observed, performed, fulfilled, and kept, respectively, according to the purport and rue intent and meaning of the same, and of the parties thereto;" then, &c. (This form of condition being general, will extend to breaches of implied as well as express covenants.—Iggulden v. May, 9 Ves. 330. 7 East, 327. 3 Smith,

(d) The assignee of a lease is bound to indemnify the leasee (that is, the assignor) against the rent and covenants, and so although he may not have stipulated to do so in the agreement, or conditions of sale.—Pember v. Mathers, I.B. & C. 52. And this indemnity becomes requisite in consequence of the lessee remaining liable for rent under his covenant in the lease, notwithstanding he may have assigned; and, indeed, if the assignor be himself an assignee, this indemnity abould be given, in order that he may be protected against his own covenant, which is generally given in all well drawn assignments; but where the vendor is an assignee, and has not given any bond or indemnity against the rent, it is apprehended that no indemnity will be requisite on the sale by him to a purchaser, he being no longer liable as a mere assignee, than whilst he holds possession of the premises.—Taylor v. Shum, I. Bos. & Pul. 21. In the case of an executor, the purchaser must covenant to indemnify, or give a bond as above, although the executor is not bound to covenant for the title.—Staines v. Morris, I.V. & B. 12. See cases, p. 195. If the indemnity be added in the assignment, the vendor should have a counterpart thereof, so as to show the indemnity if the same should become requisite; therefore, a bond is usually taken to prevent such expense.

to him, the said E. F., accordingly; AND WHEREAS, Recital of for indemnifying the said C. D. from the payment indemnify. of the said rent, and performance of the said covenants, the said E. F. hath agreed to indemnify him from the same, by entering into the above-written obligation with such condition as is hereinafter contained. Now, therefore, the condition of the Condition. above-written obligation is such, that if the above bounden E. F., his executors, administrators, and assigns, do and shall from time to time, and at all times bereafter, during the residue of the said term, well and truly pay, or cause to be paid, the yearly rent of £ ---, in the said in part recited lease contained, in manner as the same is thereby made payable; AND also, do and shall observe and perform all and every the covenants, provisoes, clauses, and conditions, which from henceforth during the same time or period, on the part and behalf of the tenant of the said premises, are, or ought to be, observed and performed, for or in respect thereof, or of any part thereof; AND do and shall from time to time. and at all times hereafter, protect, defend, keep harmless, and indemnified, the said C. D., his executors and administrators, and his and their lands and tenements, goods, chattels, and effects, from and against the same rent, (and from and against the said recited covenant(e) so entered into by him, the said C. D., for payment and performance of the same rent and covenants respectively);(f) AND also, of, from, and against, all covenants and agreements, and of and from all actions, suits, costs, charges, damages, and expenses, whatsoever, which he or they, or any or either of them, shall or may pay or sustain, or which shall or may arise or be occasioned by the non-payment, non-performance, or non-observance thereof, respectively, or of any of them. Then, &c.

(f) These words will be inserted when the assignee has covenanted in his purchase deed, or otherwise to indemnify the vendor who sold to him.

⁽e) Or part recited bond, as the case may be. (When the vendor is an assignee, the bond or covenant of indemnity given by him, when the premises were assigned to him by his vendor, should be recited.

(4.)

Bond to indemnify an under-Lessee from ground Rent.

Recital.

Condition.

WHEREAS, (recite the original lease and the underlease, and that the obligor had agreed to indemnify the obligee of and from the ground rent payable in respect to the said premises, by the above mentioned bond conditioned as hereinafter mentioned.) Now, therefore, the condition of the above-written obligation is such, that if the said A. B., his heirs, executors, or administrators, do and shall from time to time, and at all times hereafter, well and truly pay, or cause to be paid, or otherwise, well and effectually protect, defend, save harmless, and keep indemnified, the said C. D., his executors, administrators, and assigns, and their, and every of their, goods and chattels, lands and tenements, from and against the said ground rent, or annual sum of, &c., and from and against all and all manner of actions, suits, distresses, entries, losses, costs, charges, expenses, and damages, whatsoever, which he, the said C. D., his executors, administrators, or assigns, shall or may sustain or be put unto, through or by reason of any neglect or default in payment thereof, or of any part thereof, or for or on account of him, the said C. D., his executors, administrators, or assigns, subtracting or withholding any part or proportion of the rent or annual sum in or by the said lastly in part recited indenture of lease reserved, so that such rent or money to be so subtracted or withheld do not at any time exceed, and be for the only and sole purpose of paying and satisfying, the said ground rent, or other annual sum then lawfully due and payable, and interest, he, the said C. D., his heirs, executors or administrators, shall be liable to pay under or by virtue of the said firstly hereinbefore in part recited indenture of assignment of lease, for or in respect of the said premises, and so that the same rent or sum so to be subtracted or withheld be actually paid and

applied in satisfaction of the said ground rent, or annual sum aforesaid; AND moreover, if the said A. B., his heirs, executors, and administrators, do and shall from time to time, and at all times hereafter, well and truly pay, or cause to be paid, forthwith, unto the said C. D., his executors, administrators, and assigns, all such sum and sums of money as he, the said C. D., his executors, administrators, or assigns, shall by suit or action, or other proceedings at law or in equity, be compelled or compellable to pay, or shall actually pay, for or in respect of such ground or other rent aforesaid, over and above the rent and sum reserved or made payable by the hereinbefore secondly in part recited indenture of lease, or indenture of assignment, or on account of any such subtraction, or withholding of such rent or sum as aforesaid, or for or on account of his or their paying, or having paid, the said ground rent, or annual sum of, &c., or any part thereof, or any other matter or thing relative to all, any, or either, of the premises aforesaid. Then, &c.

(5.)

Bond as an Indemnity against a Defect in the Title of leasehold Premises.

WHEREAS, &c. (recite the assignment, and also Recital. recite the defect in the title; and that for the purpose of indemnifying the said (obligor), his, &c., of and from all loss, costs, charges, and expenses, which he or they may be put unto by reason of such defect, it was agreed that the above-written bond should be entered, with the condition as hereinafter set forth).(q) Now the condition of condition.

⁽g) Or thus, after the recital of the deed: "And whereas, since the execution of the said indenture, it has been discovered or conjectured that
another way some legal or other interest in or concerning the said hereditaments is outstanding and subsisting in, &c, or elsewhere, and it has, therefore, been proposed and agreed, that the said (obligor) shall give his bond with such condition as hereafter mentioned, for indemnifying the said (obligee) against all claims and demands which may hereafter be made in respect thereof."

the above-written obligation is such, that if and when the above bounden A. B., his heirs, executors, and administrators, do and shall fully and satisfactorily obviate and remove the said objection or defect hereinbefore recited or referred to, and do and shall from time to time, and at all times hereafter, in the mean time protect and save harmless, or otherwise fully and sufficiently indemnify, the said C. D., his executors, administrators, and assigns, from and against all costs, charges, damages, and expenses, to be incurred, by reason or means of any lawful or rightful claim or demand, or estate, right, title, or interest, of any person or persons whomsoever, in, to, or concerning, the said leasehold messuages, &c., so expressed, or intended to be, assigned, conveyed, or assured, to him, the said C. D., his executors, administrators, and assigns, for the residue of the said term as aforesaid, in or by the said in part recited indenture of assignment, so and in such manner that he, the said C. D., his executors, administrators, and assigns, shall or lawfully may from time to time, and at all times hereafter, peaceably and quietly have, hold, occupy, possess, and enjoy, all and singular the same hereditaments and premises, with their, and every of their, rights, members, appendages, and appurtenances, for the residue of the said term, and receive and retain the rents, issues, and profits, thereof, for his and their own use and benefit, without any manner of hindrance, interruption, disturbance, claim, or demand, whatsoever, by or from the said A. B., or his heirs, &c., or any other person or persons whomsoever, and according to the tenor and true intent and meaning of the said in part recited indenture, and more especially of, from, and against, &c. (stating the defect). &c.(h)

Another (h) The condition may be thus: "Now, &c., that if the said (obligor), his heirs, executors, administrators, and assigns, do and shall from time to time, and at all times during the remainder of the said term, save harmless and keep indemnified the said (obliger), his executors, administrators, and assigns, from and against the said (obligor), his heirs, execu-

(6.)

Bond of Indemnity to a Person permitting his Name to be made Use of in an ejectment Suit.

WHEREAS, an action of ejectment is intended to Recital. be brought, and also to be tried, at the ensuing Lent assizes, at S., in and for the said county, on the several demises of the said A. B., and the above named C. D., as plaintiffs against E. F., of, &c., as defendant, in order to establish the claim, right, and title, of the said A. B., as devisee under the will of G. B., late of, &c., deceased, to a certain messuage, land, and hereditaments, at M., in the parish of N., in the county of S.; AND WHEREAS a certain outstanding term of 500 years, formerly created of the said above-mentioned messuage, land, and hereditaments, and which by a certain indenture bearing date, &c., and made between, &c., was assigned to the said G. B., and is now vested in the said C. D., as the legal personal representative of the said G. B., and the more effectually to prosecute and try the said claim, right, and title, of the said A. B., to the said hereditaments and premises, the said A. B. hath applied to and requested the said C. D.(i) to permit and suffer his name to be made

tors, administrators, and assigns, and also of, from, and against, all and every legal and equitable right, title, interest, claim, and demand, whatsoever, to be at any time or times hereafter, during the said term, made, challenged, or demanded, by any person or persons whomsoever, in, to, or out of, the messuages, farms, lands, and hereditaments, in or by the said in part recited indenture of assignment, assigned or otherwise assured, or intended so to be or in to out of or respecting any part thereof or their intended so to be, or in, to, out of, or respecting, any part thereof, or their appurtenances, during the said term, and of, from, and against, all loss, costs, charges, damages, and expenses, which he, the said (obligee), his heirs, executors, administrators, or assigns, shall or may pay or sustain by means or in consequence of any such right, title, interest, claim, or demand, so and in such manner that he, the said (obligee), his executors, administrators, and assigns, shall and may at all times during the remainder of the said term, have, hold, and enjoy, the same messuages, &co., and receive and retain the rents, issues, and profits, thereof, subject to the covenants and agreements contained in the original indenture of lease, without any let, suit, hindrance, interruption, or denial, of or by the said (obligor), his heirs, executors, administrators, or assigns, or of any other person or persons whomsoever. Then," &c.

(i) If a common action, after reciting the preliminary matter, the further recital may run thus: "And whereas, the said (obligor) hath agreed to pay all such costs and expenses of the said suit, and to save the said (obligee) harmless from all costs and expenses already incurred, or hereafter to be sustained, by reason of his being made a party (or say defendant, as the case may be) in the said action or suit."

use of as a party in the said intended action of ejectment, and which he has consented to, on the said A. B. indemnifying and saving him harmless of, from, and against, all costs, charges, and expenses, whatsoever, to be occasioned to the said C. D., his executors and administrators, touching or concerning the same, which the said A. B. hath agreed to do.(j) Now, therefore, the condition of this obligation is such, that if the above bound A. B., his heirs, executors, administrators, and assigns, do and shall from time to time, and at all times hereafter, well and truly save harmless and keep indemnified the said C. D., his heirs, executors, and administrators, of, from, and against, all and all manner of action or actions, suit and suits, both at law and in equity, costs, charges, damages, expenses, claims, and demands, whatsoever, which can, shall, or may be, commenced, prosecuted, recovered, incurred, or occasioned to, or demanded of, upon, or against, him, the said C. D., his heirs, executors, or administrators, for or by reason or means of his permitting his name to be made use of in the said action of ejectment, (k) or otherwise on account thereof.(1) Then, &c.

How far

restrain.

(j) The recitals in the condition of an indemnity bond may restrain, but not confine, the responsibility of the sureties to the limits therein specified, where the condition imports a larger liability than the recitals contemplate.—Pearsall v. Summerset, 4 Taunt. 593. Sansom v. Bell, 2 Camp. 39.

(k) Where there, is a dispute as to the inheritance, the court will not compel the trustee of an outstanding term attending the inheritance to lend his name to either party in an action of ejectment.—Doe d. Prosser v. King, 2 Dowl. P. C. 580.

Another form of condition.

(l) Or the condition of a bond of this description may run thus: "Now, &c., that if, &c., do and shall from time to time, and at all times, well and duly pay and satisfy unto the said (obligee), his executors or administrators, or unto his attorney or solicitor, all such costs and charges as shall, can, or may, at any time or times be demanded, of or from the said (obligee), his executors or administrators, for the said prosecution (or defence) of the said action at law, (or the said suit in equity,) now depending in the said court of, &c., or anywise relating thereto, and do and shall well and sufficiently save, defend, keep harmless, and indemnified, the said (obligee), his executors and administrators, and his and their lands and tenements, goods, and chattels, from and against all costs, charges, damages, and expenses, whatsoever, which he or they shall or may at any time or times suffer, sustain, or be put unto, in the prosecution (or defence) of any other action or suit whatsoever, which may be prosecuted or commenced by the said (obliger), (or against the said obligee,) his heirs, executors, or administrators, in relation to the said matters or things, or in any way concerning the same. Then," &c.

Condition.

(7.)

Bond of Indemnity by a Landlord to a Tenant upon his agreeing to pay the Rent as usual, where the Title to the Premises is in Litigation.

WHEREAS, the above-named C. D. being tenant Recital of in possession of the dwelling-house and premises tenancy. situate, &c., taken of, and held under, the above bounden A. B., as landlord, at the yearly rent of, &c., payable, &c.; AND WHEREAS, the said C. D. has been served with a notice from E. F., of, &c., not to pay any subsequent rent coming due for the said premises to the said A. B., but to him, the said E. F., claiming as being the legal owner thereof; (m)AND WHEREAS, the said A. B. hath requested the Recital of said C. D. to continue paying the said rent, at the agreeing to time when the same shall become due, to him, the pay. said A. B., notwithstanding the suit now depending between him and the said E. F., concerning the right and title in and to the said premises, which the said C. D. hath agreed to do, upon being in-Now, there- Condition. demnified as hereinafter mentioned. fore, the condition of the above-written obligation is such, that if the said A. B., his heirs, executors, administrators, and assigns, do and shall well and truly pay, or cause to be paid, to the said A. B., his executors, administrators, and assigns, all such rent, sum and sums of money, costs, charges, damages, and expenses, whatsoever, as shall, by any due proceedings in law or equity, be adjudged or decreed against him, the said C. D., his executors, administrators, or assigns; and do and shall well and truly save harmless and keep indemnified the said C. D., his heirs, executors, administrators,

(m) The recital may be more concise, thus: "Whereas, there is a suit Another depending between the above bounden A. B. and others, concerning the form of reright, title, and interest, in and to the dwelling-house and premises cital. situate, &c., in the occupation of the above-named C. D., as tenant to the said A. B.; and whereas, the said C. D. hath, nevertheless, agreed to pay, the rent of the said house to the said A. B., as the same shall become due, upon his agreeing to indemnify him therefrom, in manner expressed in the conditions hereunder written, and which the said A. B. hath accordingly agreed to do." ingly agreed to do."

and assigns, of, from, and against, all other costs and damages whatsoever, which he, the said C. D., his executors, administrators, and assigns, shall sustain or be put unto by reason of any action, suit, or forfeiture, whatsoever, which shall or may happen or be to the said C. D., his executors, administrators, or assigns, by reason of paying the said rent, or any part thereof, to the said A. B., his executors, administrators, or assigns, in manner aforesaid. Then, &c.

(8.)

Bond of Indemnity to a Landlord by a Receiver appointed for collecting Rents.

Recital.

intended se-

curity.

WHEREAS, the said C. D., upon the application of the said A. B., hath consented and agreed to retain and employ the above bounden A. B. to receive, collect, and get in, the rents, issues, and profits, of all and singular the messuages, farms, lands, and premises, of him, the said C. D., situate and being in, &c., he, the said C. D., paying unto the said A. B., at and after the rate of £ Recital as to annum; AND the said C. D. being desirous of taking a good and sufficient security for the honesty and integrity of the said A. B., the said E. F. hath consented to join with the said A. B. in the abovewritten obligation, as a security and protection to the said C.D., his executors, administrators, and assigns, of, from, and against, all loss or damage that may be sustained by the said C. D. at any time hereafter, for or by reason of the said A. B. not duly accounting with the said C. D. for all moneys which may come into the hands, possession. or power, of the said A. B., during the time of his employ as receiver as aforesaid, and in paying over the same to the said C. D.(n) Now the condition of the above-written obligation is such, that if the

Condition.

(n) Or the recital may be shortly, thus: "Whereas, the said C. D. bath retained and employed the said A. B. to be the receiver of the rents, issues, and profits, of the said A. B., of all and singular the messuages, lands, and tenements, situate, lying, and being, in," &c. Short recital.

above bounden A. B. and E. F., their respective heirs, executors, or administrators, or some or one of them, do and shall from time to time, and at all times hereafter, as often as he or they shall be thereunto requested by the said C. D., his heirs, executors, administrators, or assigns, well and truly account to and with the said C. D., his heirs, executors, and administrators, of and for all sum and sums of money which shall come into the hands or possession of the said A. B., for or on account, or as the receiver, of the rents, issues, and profits, of the farms, lands, and hereditaments, of the said C. D., as aforesaid; AND do and shall at all times when required, pay over to the said C. D., his heirs, executors, administrators, or assigns, all such sum and sums of money which upon such account shall be or appear to be coming to the said C. D., his heirs, executors, administrators, or assigns, or that may be due or owing to him or them, from the said A. B.; AND do and shall save, protect, save harmless, and keep indemnified, the said C. D., his heirs, executors, administrators, and assigns, of, from, and against, all embezzlements, misappropriation, or misapplication, or conversion, to the use of the said A. B., of any of the said moneys, rents, issues, and profits, of the said premises, belonging to the said C. D., his heirs, executors, administrators, or assigns; AND if the said A. B. shall and do well and faithfully serve the said C. D., and truly, justly, and honestly, behave himself in every respect to his said office or employment. as receiver of the rents, issues, and profits, of the farms, lands, and hereditaments, of him, the said C. D. Then, &c. (o)

⁽o) The condition may be shorter, thus: "Now, &c., that if the said Short form. (obligor) shall and do from time to time, and at all times hereafter, as often as he shall be thereunto requested by the said (obligee), his heirs, executors, administrators, or assigns, well and truly pay, or cause to he paid, unto the said (obligee), his heirs, executors, administrators, and assigns, all such sum and sums of money as shall be by him had and received of the said rents, issues, and profits, and render to the said (obligee), his heirs, &c., a true and just account of all and every sum and sums of money that shall be by him received, paid, laid out, and disbursed, of, from, or on account of, the said farms and lands, or the rents, issues, and

(9.)

Bond of Indemnity to a Purchaser of leasehold Premises providing against Losses occasioned by one of the mesne Assignments being missing.(p)

Recital.

WHEREAS, &c. (recite the assignment of the lease to C.D., the purchaser of the premises, created by an indenture of lease dated, &c., and made between, &c.; and that, upon the investigation of the title of the said (assignor), it was discovered that one of the mesne indentures of assignment dated on or about, &c., was missing, the same being either lost or mislaid). And WHEREAS, the said A. B., for the satisfaction of the said C. D., hath agreed to enter into the above mentioned bond, with such condition as hereinafter mentioned, by way of indemnity to the said C. D., his executors, administrators, and assigns, and the said C. D. hath agreed to pay his said purchase money accordingly. (q) Now the condition of the

Agreement to indemnify.

Condition

profits, thereof, or for or on account of the said (obligee), his heirs, &c.; and also, well, truly, justly, and honestly, behave himself in the said office or employment of receiver of the aforesaid rents, issues, and profits.

are lost.

Then, '&c.

(p) Where the original lease, or some of the intermediate assignments of long leaseholds, are lost, or cannot be come at, it is the practice for the termor to are to a part of the deeds termor to create a new term by demise, equal in duration to so many years of the old lease as are unexpired, which term will, in process of time, become the foundation for a new title; but it is advisable, by a deed bearing date the day after, to take an assignment of the old term to the purchaser, or a trustee for him, care being taken to keep the two instru-

ments perfectly distinct.

In the case of Earl v. Baxter, 2 Bl. R. 1228, where a plaintiff produced the original lease, and proving possession in himself, and those under whom he claimed, for seventy years, all mesne assignments were pre-

A deed thirty years old may be given in evidence, without any proof of the execution.—Doe d. Oldham v. Woolley, 8 B. & C. 22. But recitals in old deeds are not evidence of facts, unless properly corroborated.—Fort v. Clark, Rus. 601.

As to recitals.

(q) Or the lease may be recited in the first instance: "And that whereas, by divers mesne assignments, and particularly by an indenture assignment dated, &c., the said messuage and premises were assigned to the said C. D., his, &c., as the purchaser thereof, from the said A. B.; and whereas, previously to the execution of the said indenture of assignment it was discovered that one of the mesne indentures of assignment dated, &c., was either lost or mislaid; and the said C. D., at the request of the said A. B., hath agreed to pay the purchase money upon the said A. B. entering into the above-written bond conditioned as hereinatter mentioned.

above-written obligation is such, that if the said A. B. do and shall from time to time, and at all times hereafter, save harmless and keep indemnified the said C. D., his executors, administrators, and assigns, and his and their lands and tenements, and particularly the said hereditaments so purchased as aforesaid, and also his and their goods, chattels, and effects, of, from, and against, all costs, charges, damages, and expenses, which the said C. D., his executors, administrators, and assigns, shall or may bear, pay, or be put unto, for or on account of the said C. D. being deprived of the custody of the same deed of assignment so lost or mislaid as aforesaid; and if, at any time hereafter, the said deed shall be found, and be delivered up to the said C. D., his executors, administrators, and assigns, whole and uncancelled. Then, &c.(r)

(10.)

Bond of Indemnity upon the Sale of Part of leasehold Premises to indemnify the Assignee from Payment of any Part of the Rent reserved by the original Lease.

WHEREAS, (recite the original lease, and the Recital. assignment of part of the premises, and that, upon the treaty for the sale, it was agreed that the said obligor should enter into the above bond for indemnifying him, the said obligee, from pay-

(r) If several of the deeds are lost, after reciting the assignment to the Another obligee, recite that the title deeds and evidences of title to the said lease-form. hold premises for the said term being lost or mislaid, the said (obliger) hath agreed to save harmless and keep indemnified the said (obliger), his executors, administrators, and assigns, against all persons claiming any right or title to the said premises, or any part thereof, for and during the remainder of the said term, in manner hereinafter mentioned, and then the condition may be shortly, thus: "Now, &c., do and shall from time to time, and at all times hereafter, save harmless and keep indemnified the said (obligee), his executors, administrators, and assigns, of, from, and against, all mortgages and other charges and incumbrances anywise affecting the said messuage and premises, and against all and every person and persons whomsoever, claiming any estate, right, or title, of, in, or to, the same, or any part thereof, during the said term; and if the said deeds, evidences, and writings, shall at any time be delivered to the said (obligee), his executors, administrators, and assigns, whole and uncancelled, without fraud or delay. Then," &c.

Condition.

ment of the said rent, or any part thereof, contained in the said in part recited lease). Now the condition of the above-written obligation is such, that if the said (obligor), his heirs, executors, administrators, and assigns, do and shall from time to time, and at all times hereafter, well and effectually save harmless and keep indemnified such part of the said premises as are comprised in the said in part recited lease, as are assigned to the said (obligee), his executors, administrators, and assigns, or intended so to be, by the said indenture of assignment bearing even date herewith; and also the said (obligee), his heirs, executors, administrators, and assigns, and every of them, of, from, and against, the said yearly rent of, &c., reserved and made payable by and in the said in part recited indenture of, &c., and of, from, and against, all actions, loss, costs, charges, damages, and expenses, for or in respect of the said rent, or the want of due payment thereof. Then, &c.(8)

(11.)

Bond as a collateral Security for the Performance of a Contract or Conditions for the Sale of Timber.

Revital.

WHERBAS, &c. (recite the contract, and if the sale be by auction recite that the timber trees growing on an estate and premises situate at, &c., the property of, &c., were, on the —— day of, &c., at, &c., put up to sale by auction, at which

When the

(s) If the condition be intended also to provide for the quiet enjoyment when the condition of assignee, say, "And also, if the said (obligee), his executors, administrators, and assigns, shall and may at all times, for and during the residue of the said term of, &c., demised by the said indenture of lease dated, &c., peaceably and quietly have, hold, occupy, possess, and enjoy, such of the said hereditaments and premises comprised in the said indenture of assignment of, &c., without the let, suit, trouble, interruption, or disturbance, of, from, or by, the said (obligor), his heirs, executors, administrators, or assigns or any nerson or persons lawfully claiming from, under, or in assigns, or any person or persons lawfully claiming from, under, or in trust for, him or them; but subject only to the covenants and agreements contained in the said indenture of lease, so far as the same are applicable to the premises comprised in and assigned to the said (obligee), by virtue of the said indenture of assignment, as are expressed to be thereby assigned, but discharged of the said yearly rent. Then," &c.

sale the above bounden C. D. was the highest bidder, and became the purchaser of the same). AND WHEREAS, by a memorandum of agreement dated, &c., annexed (or subjoined) to the conditions of sale then and there exhibited, the said A. B. and C. D. respectively contracted for carrying the provisions of the said conditions of sale into effect; AND WHEREAS, it was stipulated in such conditions of sale that the purchaser should enter into a bond with a surety for the payment of the purchase money by instalments, on the several days following, (that is to say, &c.,) (state the times of payment,) and the said E. F. has agreed to become such surety accordingly. Now, therefore, the con- condition. dition of the above-written obligation is such, that if the above bounden C. D., his heirs, executors, and administrators, do and shall well and truly pay, or cause to be paid, unto the said A. B., his executors, administrators, or assigns, the sum of, &c., of lawful money of Great Britain, by such instalments, as aforesaid, on the several days and times aforesaid, according to the true intent and meaning of the said conditions of sale and contract; AND do and shall well and truly perform, fulfil, and keep, all and every the articles and conditions whatsoever. which, on the part and behalf of him, the said C. D., are, or ought to be, performed and kept, comprised and mentioned in the said contract or conditions there referred to, according to the true intent and meaning thereof. Then, &c.

(12.)

Bond (for securing Money) given with a Deposit of a Lease,(t) and the Assignments thereof, as an equitable Security.

WHEREAS, the above named C. D. being in-Recital.

^(!) Although the delivery and depositing a lease as a security for money without any written assignment, passes no interest at law, yet it creates a right which may be enforced in equity.—Doe d. Maslin v. Roe, 5 Rsp. 105. As it amounts to an equitable assignment of the term.—Lucas v. Comerford, 1 Ves. jun. 235.

debted unto the said A. B. in the sum of £500 for money, being the total amount of divers sums lent and advanced to him, the said C. D., by the said A. B., sometime since, to enable him to carry on his trade and business of, &c., at, &c.; but having given no security as yet for the same, it has been agreed that the re-payment thereof, with interest, shall be secured unto the said A. B., his executors, administrators, and assigns, by the above-written bond or obligation conditioned as hereinafter mentioned, and also by a deposit of the lease and the several assignments (by the last of which the said A. B. became possessed of a leasehold messuage, farm, and lands, situate, &c., for the residue of a term of, &c., created by the said indenture of lease) as a collateral or equitable security for the said sum of £500, all interest having been paid up to the date of the above-written obligation; AND WHEREAS, the said A. B. hath deposited with the said C. D. the said deeds as such security, which he, the said C. D., doth hereby admit and acknowledge. Now the condition of the above-written obligation is such, that if the above bounden A. B., his heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, unto the said C. D., his executors, administrators, and assigns, the said sum of £500, with interest for the same, after the rate of £4 per centum per annum, on the —— day of, &c., next ensuing, without any deduction or abatement whatsoever, for or in respect of the same, or otherwise on account thereof. Then, &c.

Condition.

(13.)

Condition of an arbitration Bond between Landlord and Tenant.

Recital.

WHEREAS, differences and disputes have arisen and are now depending between the above bounden A. B. and the said C. D., respecting the management and cultivation of a certain farm situate, &c., by the said C. D., as tenant to the said A. B., and

also concerning the amount of several sums of money paid, laid out, and expended, by the said (landlord), in ploughing, harrowing, and manuring, &c., up to, &c., previous to the said tenant entering and receiving the benefit thereof as tenant as aforesaid, upon an understanding of paying the just amount thereof, and also concerning the amount of rent justly due and owing from the said C. D. to the said A. B., for the said farm and lands, as tenant thereof; AND it is agreed, by and between the said A. B. and C. D., to refer the same to P. Q. and R. S. as arbitrators, as also all and all manner of action and actions, cause and causes of actions, suits, bills, bonds, specialties, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands, whatsoever, both at law and in equity, or otherwise howsoever, which at any time or times heretofore have been had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending, by and between the said parties, with liberty for the arbitrators to appoint an umpire.(u) Now the condi-condition.

(a) Where the parties intend to refer all disputes, the terms of the reference should be, " of all matters in difference between the parties;" and when the reference is only intended to be of the matter in the particular cause, then it should be, "of all matters in difference in the cause."—Smith v. Muller, 3 T. R. 624. The submission should be mutual as in an action of debt on an award, the execution of the submission by all the

parties on both sides must be proved, and so in the case of bonds of submission, though the action is against only one of the obligors in one of the bonds.—Ferrer v. Oven, 7 B. & C. 427. 1 M. & R. 222. A submission to arbitration may be given in evidence on a count on the original promise.—Kingston v. Phelps, Peak, 227. An arbitrator's power is determined by the death of the parties to the submission, or any one of them.—Edmunds v. Cox, 2 Tidd's Prac. 877. 2 Chit. 432. 3 Doug. 406. Bristow v. Binns, 3 D. & R. 184. It is best, therefore, on entering into a rule of reference, to stipulate that the reference shall not be defeated by the death of one of the parties before award made.—Toussaint v. Hartop, 7 Taunt. 751. Moore, 287. Holt, 335. Where the deed or instrument of submission contains a proviso that the submission shall not vacate or exsubmission contains a proviso that the submission shall not vacate or expire through the death of either of the parties, it is clear that the death of either of the submitting parties will not determine the authority of the

parties on both sides must be proved, and so in the case of bonds of sub-

arbitrator, or vacate the subsequent proceedings upon the reference.—
Macdongall v. Robertson, 2 Y. & I. 11. 1 M. & P. 147. 4 Bing. 435. And
see Dowse v. Cox, 10 Moore, 272. 3 Bing. 20, S. C. (in error). Nom
Biddle v. Dowse, 9 D. & R. 404. 6 B. & C. 255. An arbitrator's decision
on the admissibility of evidence before him is final.—Symes v. Goodfellow, 4 Dowl. P. C. 642. If the submission be that "so that the witnesses be examined on oath," affidavits cannot be read; if they are, the
award may be set aside.—Banks v. Banks, 1 Gale, 46. The refusal of an
orbitrator to examine witnesses is sufficient misconduct on his part to

arbitrator to examine witnesses is sufficient misconduct on his part to

tion of this obligation is such, that if the above bounden C. D., his heirs, executors, or administrators, do and shall upon his or their part and behalf in all things, well and truly stand to obey, abide, observe, perform, fulfil, and keep, the award, arbitrament, final end, and determination, of the said arbitrators, so as the said award be made in writing on or before the —— day of, &c., (or on or before such other day, not extending beyond the —— day of, &c., as the said arbitrators shall, by writing, to be indorsed on these presents, from time to time appoint); or if the said arbitrators cannot agree and determine the same premises, and do not make such their award by the time aforesaid, that then if the said C. D., his heirs, executors, or administrators, do and shall upon his or their part and behalf in all things well and truly stand to obey, abide, observe, perform, fulfil, and keep, the award, order, arbitrament, umpirage, final end, and determination, of such person, as the said arbitrators shall elect, choose, and name, as umpire, as aforesaid, (which umpire is to be elected and chosen by the said arbitrators previously to their proceeding upon the said reference, so as the said umpire do make his award and umpirage in writing on or before the - day of, &c.,) then this obligation to be void, otherwise to remain in full force and virtue; and the said C. D. doth consent and agree that this submission shall or may be made a rule of his majesty's court of —, at Westminster, pursuant to the statute in such case made and provided; and the said C. D. doth further consent and agree, that the respective witnesses, as well of him, the said C. D., as of the said A. B., shall be examined before the said arbitrators, or their umpire, on oath; and the said C. D. further consents and agrees to pro-

induce the court to set aside his award, though he may think he has sufficient evidence without them.—Phipps v. Ingram, 3 Dowl. P. C. 669. And see Samuel v. Cooper, 2 Adol. & Ellis, 752. Upon an umpire being appointed, and furnished with the evidence of the arbitrators, it is incumbent on the parties to tender further evidence if necessary, or the award made upon the evidence so furnished, he having taken a view of the premises in dispute.—In re Tunno, 2 Nev. & M. 328. 5 B. & Adol. 488.

duce all books, vouchers, accounts, and documents, in his possession or power, before the said arbitrators, or their umpire, as they or he shall require, and do all other acts needful and necessary to enable the said arbitrators, or their umpire, to make a just award of and concerning the premises; and the said C. D. further agrees, that the costs of this reference, and of the award of the said arbitrators, or their umpire, shall be in their or his direction.

(14.)

Bond by a Tenant to a Landlord for delivering up Possession of Premises, and Payment of a Sum of Money on being released from his Contract for a Lease.

WHEREAS (recite the deed of release from land- Recital. lord to tenant). Now the condition of the above-condition written obligation is such, that if the said C. D., for payment by his heirs, executors, administrators, or assigns, do tenant. and shall well and truly pay, or cause to be paid, to the said A. B., his heirs, executors, or administrators, on the —— day of, &c., now next ensuing, the full sum of, &c., of lawful money of Great Britain; AND also, if the said C. D., his heirs, execu- And for tors, or administrators, do and shall quit, leave, quitting. and surrender up, unto the said A. B., his heirs, executors, administrators, or assigns, full and free possession of the said premises, on the —— day of, &c.; AND do and shall in all things well and truly And for perperform all and every the covenants, articles, and forming covenants in agreements, in the said recited indenture of release mutual reor discharge, so far as the same relate to him and lease. them, and as are expressed and contained on his and their part and behalf, to be performed, ful-filled, and kept; (v) then the above obligation to be void, otherwise to remain in full force and virtue.

⁽v) For this release see the head "Releases."

OBSERVATIONS AND CASES.

HE who makes a bond is called the obligor, and Obligor and obligee. he to whom it is made is called the oblique. (w)

It is called a single bond when it is without any Single bond. defeazance or condition annexed to it, or under it.(x)

When the condition is contained in a separate Condition. instrument, it is generally termed a defeazance: but when inserted in the same deed with the obligation, which is generally the case, it is usually termed the "condition" of the obligation.

It is to be observed, that whatsoever for the When good. matter of it may be good in a covenant, the same will be also good in the condition of an obligation; and that, therefore, the matter of a covenant may be easily turned into the form of the condition of

an obligation.(y)

Sometimes a lessor, in addition to the lease, re-Surety in a bond with quires and takes from the lessee and another tenant for person as a surety, a bond for the performance of payment of rent the covenants contained in the lease, by which means he obtains a more extensive security by the penalty in the bond; and it appears that where the penalty is not sufficient, the plaintiff may recover

damages as well as the penalty. (z)

Principal and surety in a money bond.

In case of an ordinary money bond, there is no distinction upon the face of it between the principal and surety; but otherwise in the case of an

⁽w) Shep. Touch. 367.

⁽x) Id.

⁽y) Shep. Touch. 371.

(z) White v. Sealey, 1 Dougl. 49. Lonsdale v. Church, 2 Term R. 80. In White v. Sealey, the bond itself for payment of rent was held only a security to the amount of the penalty. In Lonsdale v. Church, being a debt in bond, with a condition to account for money to be received, the court would not stop proceedings upon paying the penalty into court, because damages might be recovered beyond that amount. But it appears the court will order satisfaction to be entered on record in an action on a bond of indemnity, on the defendant's paying the penalty of the bond, and costs of the action.—Wilde v. Clarkson, 6 T. R. 303. Shutt v. Procter, 2 Marsh. 296.

indemnity bond, where the surety expressly stipu-

lates for the act of his principal.(a)

The obligee of an indemnity bond, upon being Right of damnified, has an immediate right to be reim-when dambursed.(b) For one who agrees to indemnify and nified. save harmless against a certain engagement, is bound to secure them from incurring any expense, as it runs on at the time which falls upon them by

virtue of that engagement. (c)

Under a bond of indemnity given by A. that B., Sureties. who was appointed the general agent of C., the receiver of his rents, and the manager of his estates, should pay over to C. all rents which he should receive, as also the increase and improvements thereof upon any new contracts, or renewals of leases; A., the surety, is answerable for all fines received by B. on renewing the leases, which were not paid over by him.(d)

A. being principal, and B. surety, in an annuity surety. to C., A. gave a bond conditioned to pay the annuity to C., and to indemnify B. from any claims of C.;—held that this was not a mere indemnity bond, and that B., therefore, might put it in suit as soon as A. made default in payment of the annuity, without proving that he had actually been

damnified. (e)

The condition of a bond executed by the prin-Recital in cipal and two sureties, in the penal sum of £1000, contained a recital that the obligor had taken a farm of the plaintiff, (the obligee,) subject to the payment of rent reserved in a lease of even date with the bond, and that it had also been agreed by the obligor and the plaintiff that the obligor should enter into a bond with two sureties in the penalty of £500, for the due payment of the rent. Rent having been found by a jury to be due to the plaintiff, to the amount of £740, the court refused

⁽a) Antrobus v. Davidson, 3 Mer. 758.
(b) Challoner v. Walker, 1 Burr. 574.
(c) Sparks v. Martindale, 8 East, 593.
(d) Irish Society v. Needham, 1 T. B. 482.
(e) Perring v. Foy, 2 M. & R. 181.

to reduce the verdict to £500, to which only it was contended the sureties could be liable by virtue of

the recital in the condition. (f)

When obligor will

The obligor of a bond, conditioned for the paybe estopped, ment of rent at the rate of a certain sum a year, "according to an indenture of lease," is estopped in an action on the bond from saying that the rent reserved by the indenture was a different sum a

year.(g)

Impossia bond.

Where the *condition* of a bond is originally imbility of the possible, the bond is absolute. Where the condition is originally illegal, the bond is void. Where the condition subsequently becomes impossible by the act of the obligor, or of a stranger, the bond is forfeited. Where it becomes impossible by the act of the obligee, the bond is saved. (h)

Liability of suretics.

The liability of a surety in a bond is not discharged by the delay of the creditor suing, or by the circumstance of the principal afterwards executing to the creditor another bond for a larger sum.(i) A surety may be sued in the first instance; but if the creditor sues the principal first and gives time, the surety is discharged. (j) But it is no defence at law to an action on a bond against a surety that by a parol agreement time has been given to the principal. (k) If the obligee in a bond with a surety, without communication with the surety, take notes from the principal and gives further time, the surety is discharged. (1)

(k) Davey v. Prendergrass, 5 B. & A. 187. 2 Chit. 336.

(l) Rex v. Berrington, 2 Ves. jun. 540. And if the creditor suce the principal by direction of the surety, but without his privity agrees to stay execution, the surety is discharged.—Id.

⁽f) Ingleby v. Mousley, 3 M. & Scott, 488.
(g) Lainson v. Tremere, 3 Nev. & M. 603. 1 Adol. & Ellis, 792.
(h) Beswick v. Swindells, 5 Nev. & M. 378.

⁽i) Eyre v. Everett, 1 Russ. 381.
(j) Wright v. Simpson, 6 Ves. jun. 734; and see Nisbet v. Smith, 2 Bro. C. C. 579. The surety will be discharged by the bond creditor entering into a binding contract with the principal without the concurrence of the surety, because the creditor has put it out of his own power to enforce immediate payment where the surety would have a right to require him to do so.—Archer v. Hall, 1 Moo. & P. 285. 4 Bing. 464; and see Orme v. Young, Holt, 84, 8. P. 4 Camp. 336. And giving time to the principal the grantor of an annuity exonerates the surety from past as well as future arrears.—Byre v. Bartrop, 3 Madd. 221.

(k) Davey v. Prendersyss. 5 B. & A. 187. 2 Chit. 336.

obligee and principal in a replevin bond, without the knowledge of a surety, entered into an agreement for a reference of all matters in dispute between them to arbitration, and afterwards the principal gave a cognovit acknowledging the obligee's right to distrain for the sum awarded, and authorising judgment of non pros. to be entered up in the ensuing term, which was a term later than that in which, according to the usual course, judgment might have been signed;—it was held that the surety was discharged from his obligation.(m) It appears a court of equity will not relieve a surety by bond upon the ground of the creditors having given time to the principal debtor, unless there has been an express and positive contract between them for that purpose.(n) A surety may protect himself by stipulating in the guarantee that he shall be at liberty to determine his liability at the expiration of a specified time after notice.(o)

Where a surety entered into a bond with a Bankruptcy principal, conditioned for the performance of covenants contained in an agreement for a lease, such surety is still liable, although the principal become

bankrupt, and be discharged under the act.(p)

If a creditor execute a deed of compromise with Composithe principal debtor, he thereby discharges the tion. surety.(q)

Although time given to the principal will, under When sime certain circumstances, exonerate a surety, yet time given by principal. given to a surety will not, upon his paying the debt, affect his right of action for contribution against such co-surety.(r) There is a right of

⁽m) Bournaker v. Moore, 1 Dan. 264. (n) Heath v. Key, 1 Y. & 1. 434. (o) Calvert v. Gordon, 3 M. & R. 124. 1 M. & R. 497. 7 B. & C.

⁽p) Inglis v. Macdougal, 1 Moore, 196.
(q) But not so if it be stipulated in the deed of composition that the remedies against the sureties shall be reserved.—Id. And the creditors executing a deed of composition with the principal debtor, and certain of his sureties, may reserve their remedies against other sureties.—Ex parte Carstairs, Buck. 560. But parol evidence as to such reservation cannot be admitted.—Id.

⁽r) Dunn v. Slee, 1 Moore, 2. Holt, 399. A surety in an indemnity bond may maintain assumpait against his co-surety, although he have

contribution between co-sureties, whether by separate instruments, or by the same instrument.(s) But where sureties are bound by different instruments for equal portions of a debt due from the same principal, and the suretyship of each is a distinct transaction, there is no right of contribution between them.(t) A promise by one surety to indemnify another need not be in writing. (u)

Co-sureties.

It seems that one of several co-sureties in a bond may recover any one of the others his aliquot proportion of the money paid by him under the bond, regard being had to the number of sure-

Contribu-

If A., B., and C., become bound as sureties for tion of sure- D. in three separate bonds, and any one of them be compelled to pay the whole debt of the principal, the two others are compellable to contribute in proportion to the penalties of their respective bonds.(w)

The effect of debtor.

In general, a release to a principal debtor is in a release to equity a release to the surety; but if the surety has, previously to the release given by the creditor, paid part of the debt, and given a security for the remainder, the general rule will not apply; but the creditor, notwithstanding the release, will, in the absence of evidence to the contrary, retain his right

> given a subsequent security to the obligees under which he paid the sum conditioned in the bond, without the knowledge or consent of such cosurety.— Id.

surety.— Id.

(s) Mahew v. Cricketts, 2 Bing. 185. 1 Wils. C. C. 418. 8. P. Craythorn v. Swinburne, 14 Ves. jun. 160.

(t) Coope v. Twynam, 1 Turn. & Russ. 426. The doctrine of contribution amongst sureties is not founded on contract, but is the result of general equity, on the ground of equality of burden and benefit. Therefore, where three sureties are bound by different instruments, but for the same principal, and the same engagement, they shall contribute.— Deering v. Winchelsea (Earl), 1 Cox. 318. 2 B. & P. 270.

(u) Not being considered within the third section of the statute of frauds.—Thomas v. Cooke, 3 M. & R. 444. 8 B. & C. 728. In this case a person entered into a bond of indemnity at the request of another, who promised to save him harmless from all loss by reason of the bond, this

promised to save him harmless from all loss by reason of the bond, this promise was held binding, though not in writing, and that the person might recover the whole of the moneys from the other surety, (so promising to indemnify him,) which he was compelled to pay by virtue of the

(v) Even though the insolvency of the principal and of the other sureties be not proved.—Cowell v. Edwards, 2 B. &. P. 268.

(w) Deering v. Winchelsea (Earl), 2 B. & P. 270. 1 Cox, 318.

against the surety. (x) Where an obligor has, by vexatious proceedings, delayed the obligee from recovering on his bond, a court of equity will decree payment of the full amount of principal and interest, although it exceeds the penalty of the

bond.(v)

The statute 8 and 9 W. III., c. 11, s. 8, which enacts that in actions on any penal sum for non-performance of covenants, &c., the plaintiff may assign as many breaches, &c.; and if judgment shall be given for the plaintiff on nil dicit, the plaintiff may suggest on the roll as many breaches, &c., as he shall think fit, upon which shall issue a writ to the sheriff to summon a jury before the justice of assize, &c., to inquire, &c., and to assess the damage, &c., is compulsory on the plaintiff, and he cannot enter up judgment for the whole penalty on a judgment by default, as he might have done at common law.(z)

(x) Hall v. Hutchinsons, 3 Mylne & K. 426.

⁽y) Jendwine v. Agate, 3 Sim. 129.

(z) Rose v. Rosewall, 5 T. R. 538; and see S. P. Hardy v. Bern, 5 T. R. 636; and see the above act as to proceedings on bonds; and see 3 and 4 W. IV., e. 42, a. 3, as to the limitation of time for bringing actions on bonds, being ten years after the end of session 1833, or within twenty years after the cause of action accrued, and making an acknowledgment in writing, extend the term for a further period of like limitation.

CONDITIONS OF SALE.

(1.)

Conditions of Sale of leasehold Property.

The highest bidder.

1. That the highest bidder shall be declared the purchaser; and if any dispute shall arise between two or more bidders, the estate shall be immediately put up again.

Advance.

2. That no person advance less than ten pounds

at each bidding.

Deposit.

3. That the purchaser shall pay down immediately into the hands of Mr. ——, a deposit of £20 per cent. in part of the purchase money, and sign an agreement for payment of the remainder on or before the —— day of, &c., to which time all outgoings will be cleared; but in case any delay, from any cause whatsoever, should arise, to prevent the completion of the contract, on or before the said —— day of, &c., then the purchaser is to pay interest on his remaining purchase money, at the rate of £4 10s. per cent. per annum; but, nevertheless, this stipulation to be without prejudice to the vendor's right to insist on the performance of the last condition.

Assignment to be made.

4. The purchaser to have a proper assignment of the lease (at his own expense) on payment of the remainder of the purchase money, agreeable to the third condition, and possession will be given on completing the purchase; but the vendor is not to give any other title than the lease (and assignments thereof) with all the usual covenants; (a) and the purchaser shall not be entitled to require or call

⁽a) If it be an occupation lease say, "And which lease is granted to the (assignor), subject to the following rent and covenants on the lessee's or assignee's part to be paid, performed, and kept, (that is to say,") (here set forth an abstract of the covenants).—See pp. 69 and 85, and then the following part of the fourth condition may form a separate provision.

for the title of the lessor; (b) and if any deeds, certificates, or other documents, (not in the vendor's custody,) shall be required to be produced, the same to be at the purchaser's expense; and all attested copies, and deeds of covenants for production of deeds, to be also at the purchaser's ex-

- 5. There are various articles of fixtures (an Fixtures. inventory whereof will be produced at the time of sale) which the purchaser is to take at a valuation to be made thereof by two referees, or their umpire, and paid for at the time of completing the purchase of the estate; and the purchaser may be accommo-Furniture. dated with all or any part of the furniture at a like valuation.
- 6. The auction duty(c) of seven-pence in the Auction pound to be equally borne by the vendor and pur-duty. chaser.
- 7. If, through mistake, any articles be mis- Provision in stated or omitted in this particular, such error or in particuerrors shall not vitiate the sale; but the purchaser lars. or vendor, as the case may happen, shall pay or

(b) This stipulation is requisite, as there is in every contract for Stipulation the sale of a lease an implied undertaking, to make out the lessor's as to not title to demise, as well as that of the vendor to the lease itself, producing which implied undertaking is available in law as well as in equity. lessor's title.—Souter v. Drake, 5 Barn. & Ald. 992. Purvis v. Rayner, 9 Pri. 488. The reason, in general, for requiring the production of the lessor's title to demise (apart from all question of contract) is thus: He might be tenant for life only, and yet have attempted to grant a lease for 500 years; or he might have assumed a power which he did not possess, of appointing for such or any other term; or even assuming that he sess, of appointing for such or any other term; or even assuming that he had an estate commensurate with the interest alleged to be created, yet such estate might be in mortgage, and thereby the lease of a mortgagor, who even if he is in possession, will not bind the mortgages.—See note to p. 93; and see further cases, Pupe v. Biggs, 9 Barn. & Cress. 245; and see Castigan v. Hastler, 2 Sch. & Lef. 160. Notwithstanding the usual clause of not producing and proving the lessor's title to demise, it is necessary to begin the deduction of the title with the original lease, and all mesne assignments ought, in general, to be produced; but where this cannot be done, and where there is evidence of uniform possession for a considerable time conformably to the ownership under the lease a willing siderable time conformably to the ownership under the lease, a willing purchaser will often relax this rule; but where the lease or any of the mesne assignments have been lost, the purchaser cannot safely waive all objections to the title on this ground, nor even if they would afford no obstacle to his recovering the land in an action at law.—See Sug. Vandor and Purch 1 232 Deat Abril 11 and Purch. 1, 338. Prest. Abst. 1, 11.

(c) In the absence of any stipulation to the contrary, the auctioneer, Deposit to agent, or seller by commission, is bound to pay the auction duty, which auctioneer, he may deduct out of the money he receives at the sale. If he receive

none, he may recover it from the vendor by action.

allow a proportionate value according to the average of the whole purchase money, as a com-

pensation either way.

Provision in case of failure by parties in complying with the conditions.

Lastly. Upon failure of complying with the above conditions, the money deposited shall (at the expiration of the time before limited) become forfeited to the vendor, who shall then be at full liberty (with or without notice) to re-sell the estate; and if, on such re-sale, there be any deficiency, the purchaser at this sale neglecting to comply with these conditions shall make good such deficiency to the vendors, and all expenses attending such re-sale.

(2.)

Conditions of Sale of a fee farm Rent.(d)

Highest bidder. 1. The highest bidder to be the purchaser; and if any dispute arise between two or more bidders, the lot to be immediately put up again.

Advance.

2. No person is to advance less than ten pounds

at each bidding.

Deposit,

3. The purchaser is to pay down immediately a deposit of £20 per cent. in part of the purchase money, and sign an agreement for payment of the remainder on or before the —— day of, &c.

Assignment of lot.

4. The purchaser shall have a proper assignment of the lot at his own expense, on payment of the purchase money, agreeably to the third condition, and to be entitled to the rent from, &c.

Failure in compliance.

Lastly. If the purchaser shall neglect or fail to comply with the above conditions, the deposit money shall be forfeited, and the vendor shall be at full liberty to re-sell the said lot; and the deficiency (if any) arising by such second sale, together with all charges attending the same, shall be made good by the defaulter at this present sale.

(d) This short form will be applicable in any small sale by auction.

(3.)

Conditions for the Sale of Timber.

1. That there shall be two bidders at the least, The highest bidder. and the highest bidder to be the purchaser at the expiration of three minutes from the preceding bidding, provided the same shall exceed or be as much as a sum to be mentioned in a paper sealed up and laid upon the table for each lot so specified, previous to the commencement of the sale; and if any dispute shall arise, the same lot shall be put up again for sale.

2. That no person shall advance less than £-Advance in

at each bidding.

biddings.

3. That the purchaser of each lot shall imme-Deposit. diately pay down a deposit of £10 per cent. in part of the purchase money, and the remainder on the

—— day of ——, 18

4. That the purchaser of each lot shall enter into proper articles agreeable to these conditions, at the joint expense of himself and the vendor, and also shall and will, within four days from this day, at his own expense, enter into a bond, with sufficient security, to be approved by the vendor, at his house in, &c., for the payment of the remainder of the purchase money, according to the third condition above mentioned, and also for the performance of these conditions; and until such security be given, the timber trees and other wood, and every part thereof, to be considered as the property of the vendor, whether fallen or not.

5. That the purchaser, his servants, and agents, Purchaser to shall have power to enter on the premises where the fall, &cc. trees are growing; and shall, at his own expense, properly axe fall and cut down the said ash and underwood on or before the —— day of, &c.; and also shall cut down the said timber and other trees, and butt and top the same, on or before, &c., without doing any wilful damage to the saplings or other wood in the coppices, hedges, fences, or premises, and the said timber and other trees stocked, and the

roots and spurms got out of the ground in a fair and workmanlike manner; but such of the trees as grow on the banks of the brooks, gutters, or rivulets, to be axe fallen in such manner as the vendor shall direct, so as to prevent the banks of the same from being broken or falling in.

Clearing off.

6. That the whole of the said ash and underwood shall be cleared off the said coppice and premises on or before the said —— day of ——; and the whole of the timber and other trees, bark, cordwood, and wood, arising from the said timber trees, shall be cleared off the said lands and premises by the usual and proper roads to the same on or before, &c., until which time the purchaser shall have the usual privilege of sinking saw-pits and getting turf in such places to be appointed by the vendor or his agent for that purpose, for converting the said timber, and coking the cordwood; not doing any wilful damage to the saplings or other wood growing on the said coppice and premises; such saw-pits, so to be made as aforesaid, shall be properly fenced or covered, and shall, immediately after the converting of such timber, be filled up at the expense of the purchaser, except as hereinafter mentioned; and such of the ash, underwood, or other trees, cordwood, or other wood, as is or shall be then remaining on any part of the said lands and premises, shall be forfeited to the said vendor, as and for a compensation for such damage as shall be occasioned thereby.

As to the laying of the tops and boughs.

7. That the said purchaser shall have the boughs and tops of the said timber and other trees cut off and laid on the bodies thereof, or under the hedges and fences by which the least damage can be done to the crops of grain, within three days after such being fallen; and shall not work nor carry away any part of the said timber and other trees till after such crops of grain are cut or carried, except the bark of such timber or other trees which the purchaser shall have carried from and off the said crops of grain, without taking any horse or carriage on such crops for such purpose.

8. That the purchaser shall allow five stakes for Allowance every tree fallen in the hedge-rows or fences to of stakes. make up the gaps in the said fences where such trees are so fallen as aforesaid, and also a full compensation for all damages sustained in falling such ash, underwood, timber, and other trees, except

such as may be necessary and reasonable.

Lastly. That if the purchaser shall refuse, fail, or In case of neglect, to perform the several conditions herein-compliance before stated, the deposit money shall be forfeited with conditions. to the vendor, who shall be at liberty either to enforce the present contract or to re-sell the timber or other trees as aforesaid, by public auction or private contract; and the deficiency (if any) of such second sale, together with the charges attending the same, shall be made good by the defaulter at this present sale.

(4.)

Conditions for letting Premises on Lease.(e)

1. That the premises shall be put up to sale to Highest the highest bidder of an annual rent payable half-bidder. yearly, and that there shall be two or more bidders at least, and the person who shall be the highest bidder at the expiration of two minutes from the preceding bidding, according to a minute glass now produced by the auctioneer, shall become the tenant or renter for the same, provided the sum bid shall be as much as a sum to be mentioned on a paper sealed up and delivered, and laid upon the table previous to the commencement of the sale; [but the biddings to remain open until the auctioneer shall declare the last bidder to be the renter].

2. No person to advance less than £ —— at Advance.

3. The purchaser to pay down immediately into Deposit.

⁽e) No duty is payable on auctions held for letting any estate for lives or years to be created by the persons on whose account such auctions shall be held.—See section 14 of 19 G. III., c. 56. This mode of letting estates is frequently adopted by corporations and other public bodies.

the hands of, &c., a deposit of £20 by way of advance, and in part payment of the first half year's rent.

Articles.

4. The person who is declared to be the highest bidder to enter into articles at his own expense for taking a lease of the messuage, farm, lands, &c., from the lessor, for a term of twenty-one years, to commence on, &c., at the rent bid by him, payable on, &c., and execute a counterpart thereof, (such lease and counterpart to be prepared by Mr. G. H., of, &c., solicitor, and the costs and expenses thereof to be equally borne by the said lessor and lessee,) and such lease and counterpart to contain the following covenants, (that is to say,) (set forth the intended covenants by way of abstract, see p. 69, No. 3,) and all other usual covenants between landlord and tenant, according to the custom of the country; and such person being the highest bidder to produce, at the time of executing the said lease and counterpart, (f) a sufficient and responsible surety, to be approved of by the lessor, to enter into a bond in a sufficient penalty conditioned for the payment of the rent, and performance of the covenants and stipulations to be contained in the lease and counterpart, so to be prepared as aforesaid.

Neglect in complying with conditions.

5. If the purchaser shall neglect or refuse to comply with these conditions, he shall forfeit his deposit money to the lessor, who shall be at liberty to put up the messuage, &c., again by auction for letting; and if, upon such second letting by auction, the said messuage, &c., shall not fetch so high a rent as on the first letting by auction, the deficiency for the whole term for which the premises are put up and re-sold shall be made good by the defaulter, who shall pay all costs and expenses attending the second letting by auction; and in case the landlord shall not be able to make out a good title for grant-

⁽f) Or say, "To produce, at the time of entering into the said articles for taking the lease, a responsible surety to enter into a bond with a sufficient penalty, and to be conditioned for the performance of such contract."

ing the lease, the deposit money shall be returned by the landlord to such highest bidder immediately after such default, with lawful interest for the same.

(5.)

Conditions of Sale pursuant to an Order of the High Court of Chancery.

1. THE purchaser of each lot is to pay his or her The purpurchase money into the court of chancery to the chaser to pay credit of the cause.

court of chancery.

2. The title deeds which relate to several lots the purchaser of the largest chaser of the lot, except such deeds (if any) as may comprise largest lot to hold the property not disposed of at this sale; the party re- deeds. ceiving or holding the deeds to enter into the usual covenant for the production thereof, and for delivery of attested copies thereof, if required, to and at the expense of the respective purchasers of the other lots requiring the same, at whose expense all attested and other copies, and other documents that may be required, are to be had.

3. The entirety of the premises comprised in lots Title as to a 6, 7, and 8, having been purchased of, and conveyed by, the corporation of ----, the respective purchaser thereof, are not to require any evidence of title thereto prior to the several deeds of convey-

ance by such corporation.

4. The vendors, under the direction of the court, Reserve reserve one bidding on each lot; and, therefore, if bidding. the sum offered shall not amount to the reserved

price, the lot will be declared unsold.

5. The premises in lot 1, will be sold subject Lot subject to a road. to the free use of the road therein mentioned by the occupier of the house, &c., comprised in lot 2, to and from the —, but for the sole and private use only of such occupier; and also to the free use by such occupier, for his own private use only, of -, but he is immediately to carry away anything landed thereon, and not land anything there for

sale, or for any other purpose than his own private use; and also subject to the free use of so much of the said road as will be required by the purchaser of lots 3, 4, and 5, to enable them to enter and enjoy the pieces of land contained in such lots

respectively.

As to putting up lots, and as to biddings. 6. If the highest biddings for the lots 2, 3, 4, and 5, should amount to the aggregate sum of \pounds —, the said several lots shall be knocked down to the highest bidders respectively; but if such aggregate biddings should be less than \pounds —, then the property comprised in the said lots shall be put up for sale in a single lot; and if no advance should then be made on the amount of the aforesaid actual aggregate biddings, the property shall be then knocked down to such highest bidder respectively as aforesaid, provided such actual aggregate biddings shall not be less than the reserved prices to be fixed pursuant to the fourth condition of sale.

Provision in case of mistake.

Lastly. If any mistake be made in the description of the premises, or any error or mis-statement appear in the admeasurement of the lands described in any of the lots, such mistake or error shall not vitiate the sale, but a compensation or equivalent shall be given or taken as the case may require, such compensation or equivalent to be settled by the master in case the parties differ about the same; and any question which may arise between the vendors and purchasers in respect of this sale, or the title or conveyance of any of the premises, to be also determined by the said master.

N.B.—The above lots being sold under the high

court of chancery, are free from auction duty.

(6.)

A general Form of Conditions of Sale.

Highest bidder. 1. THE highest bidder to be the purchaser; and if any dispute shall arise between bidders, the estate to be put up again.

2. No person to advance less than ten pounds at Advance in biddings.

any bidding, or retract such bidding.(q)

3. The purchaser to pay down immediately, into Deposit the hands of Mr. M., (λ) a deposit of £ —— per cent. in part of the purchase money, and be liable to a moiety of the auction duty, and sign an agreement for the payment of the remainder of the purchase money, on or before the —— day of, &c., next, from which time the purchaser shall be entitled to the rents and profits of the estate, and up to which time all outgoings shall be cleared by the vendor.

4. An abstract of the title to be prepared and Delivery of delivered at the expense of the vendor, (i) who purchaser, shall execute a conveyance at the purchaser's and execuexpense, on payment of the remainder of the veyance. purchase money, agreeably to these conditions; but should any delay occur in the completion of the purchase on the said —— day of, &c., (from any cause whatever,) the purchaser shall pay interest on the residue of the purchase money, and on the amount of the valuation mentioned in the eleventh condition, from that time up to the time of completing the purchase; but this provision is not to prevent the vendor requiring the completion of the purchase on the said —— day of, &c., or as soon after as may be.

5. All attested, official, other copies or extracts As to attested copies of deeds, wills, or assurances, not in the possession of deeds, &c.

(9) The latter part of this clause will prevent the bidder being at liberty Retracting. to retract his bidding, which, if not inserted, he would be at liberty to do.

Payne v. Cave, 3 T. R. 148.

(A) The auctioneer should hold the deposit until the time of the comple- Deposit. tion of the purchase, he being liable to an action for a return of the deposit, if the purchaser be entitled to recover it.—Burrough v. Skinner, 5 Burr. 2639; and see Gray v. Gutteridge, 1 M. & R. 614. 3 C. & P. 40; and see Spittle v. Lavender, 5 Moore, 270. 2 B & B. 452. And where the sale was not completed on account of defect of title, the deposit was recovered from the auctioneer, upon an account for money had and received, although he had paid it over to the vendor before the defect was discovered.—Id. But,

until demand made of the deposit, it was held that he was not liable to
pay interest.—Mitchell v. Hayne, 2 Sim. & Stu. 63.

(i) It should always be stated in the conditions that the conveyance preparation shall be prepared by, and at the expense of, the purchaser, to enable the of conveyance preparation and the expense of the purchaser, to enable the of conveyance preparation of vendor to maintain an action, or file a bill without tendering a convey-ance.—Hawkins v. Kemp, 3 East, 410; and see Seward v. Willcock, 5

East, 198.

of the vendor, and all certificates or copies of parochial or other registers, or evidence as to pedigrees, which may be required by the purchaser for the purposes of examination, or of verifying or proving the abstract, or any fact, matter, or thing, therein, or in the deeds or assurances contained therein, set forth, stated, or recited, or otherwise, or for any other purpose, and all deeds of covenants or assignments of terms, or documents for effecting the same, (should any such be necessary,) which shall be required by the purchaser, shall respectively be made and obtained at his expense.(j)

As to covenant for production of title decds by purgreatest lot.

6. That as to such of the title deeds which concern this estate, as relate to other estates of greater value, the vendor shall retain the same in his chaser of the custody, and enter into the usual covenants (to be prepared by his solicitor, and at his expense) for the production of them to the purchaser, or respective purchasers; but all attested copies which may be required of such deeds, shall be had and made at the expense of the person requiring the same. (k)

As to the production of land.

7. The piece of land called M. having been reof title to a ceived in exchange in 18, the purchaser shall not certain piece require production of any earlier title to that piece of land than the deeds of exchange dated, &c.;

Recital in deeds.

(j) Here may be added, "All recitals in title deeds made more than twenty years ago of births and marriages, heirsbips and descents, shall be accepted by the purchaser as an evidence of the facts so recited, without the vendor being liable to the production of certificates and pedigrees, or

When sold in lots.

other documentary evidence in support thereof."

(k) If the estate be sold in lots the following may be inserted: "That the title deeds shall be retained by the vendor until all the estates now offered for sale shall be sold, when they shall be delivered over to the largest purchaser upon his entering into the usual covenants for the production thereof to the other purchasers; such covenants to be prepared by, and at the expense of, the person or persons requiring the same. Whilst the deeds remain in the seller's hands he shall produce them to the several purchasers when required, and every purchaser may at any time have attested copies of the deeds at his own expense."

Or thus: "That all attested copies of the title deeds shall be made and delivered at the expense of the person requiring the same, unless his or her purchase money exceeds \pounds —, but does not amount to \pounds —, in which case the vendor shall furnish the attested copies of all such deeds and writings as shall be deemed necessary, according to professional usage, at the joint expense of him and the purchaser; and if the purchase money exceeds £ ---, the vendor shall furnish the same at his own expense.

also, that the vendor shall not be bound or required to identify the modern with the ancient descriptions of the parcels, further than he has done, in a terrier to be delivered with the abstract. That the purchaser shall take the title to a small close of land called the, &c., as it stands deduced on the abstract, without requiring any further information respecting it, as none can be given.

8. That all allotments, in lieu of rights of com- As to allotmon or otherwise, shall be taken to have been right of regularly and duly made, and that the vendor shall common. not be bound or required to produce any further title to such rights of common or other lands for which such allotments were made, than what ap-

pears on the abstract.

9. That the vendor shall not be required to get As to getting in the legal estate in some part of the premises sup- in outstanding estates. posed to be outstanding in R. S., or his heirs at law. That as to such parts of the property as are leasehold, the vendor shall not be bound to produce any earlier title than the original lease, and shall not be required to show or be answerable for his lessor's title; and if it appear that the vendor's title consists merely of an under lease, such under lease shall be the limit beyond which the vendor shall not be bound to produce any evidence of prior dealings with the property.(1)

10. The estate has been held and is considered Tithes.

(1) When the vendor is desirous that the period for investigating his As to title to title shall be limited, some of the following clauses may be inserted, thus: certain lots. "The purchaser shall not be entitled to require or call for any title to any of the lots prior to the purchase deeds in the years, &c.; nor for the title of the lessors to such of the lands as are leasehold. Nor will the vendors furnish any abstract of any deeds recited in such purchase deeds. Nor will they in any manner deduce a title to the said lots, but only a title subsequent to the dates of the said purchase deeds. Nor will the vendors subsequent to the dates of the said purchase deeds. Nor will the vendors be answerable or accountable for any defect of title appearing upon the face of such purchase deeds, nor identify the modern with the ancient description of the parcels. The estate having been devised under the will of Mr. A. B., in May, 18, in which there is a description of the property devised, no earlier title shall be required. Also a small part held under an exchange effected in 1805, an earlier title to that part is not to be required. And the titles having been purchased by the present seller, Mr. Q., in the year 1822, the vendors will not be bound to show Mr. R.'s title to the said titles. Abstracts of title will be prepared at the vendors' expense; but all conveyances and other assurances, and all attested or other copies, that shall be required, either for the purpose of verifying the abstract or otherwise, are to be at the purchaser's expense." abstract or otherwise, are to be at the purchaser's expense.

to be tithe free; but the vendor shall not be bound to prove the exemption from tithe, or adduce any evidence of impropriation, or furnish an abstract of, or produce for examination, or otherwise, any document of prior date to the will whereby the estate was devised in the year 18.

Timber.

11. The purchaser shall, at the time of completing his purchase, pay for all timber and timber-like trees, tellers, pollards, and other trees, down to—per stick inclusive.

As to the description of lots.

12. The description and admeasurement of the property are considered to be correct, and shall be taken as such; and if any error shall appear, no abatement shall be required by the purchaser, nor any advance of price required by the vendor.

Provision in case of failure in complying with the conditions.

Lastly. If the purchaser shall neglect or fail to comply with the above conditions, the deposit money shall be forfeited, and the vendor be at liberty to re-sell the estate, either by public auction or private contract; and the deficiency (if any) upon such second sale, with all expenses attending the same, shall immediately after such sale be made good by the defaulter at the present sale to the vendor; and in case of non-payment, the whole of the same shall be recoverable by the vendor as liquidated damages. (m)

⁽m) This clause is very important, for it forms a lieu on the estate for the purchase money, and enables the vendor, on non-compliance by the purchaser with the conditions, to re-sell the estate, and to recover the deficiency (if any) from the purchaser.

OBSERVATIONS AND CASES.

Conditions of sale will be construed by the How concourts so as to collect the meaning of the parties, strued. without being incumbered with the technical meaning of the words. (n) Great care, however, should Should be be taken to make the particulars and conditions accurate. accurate, for the auctioneer cannot contradict them at the time of sale.

When an estate is leasehold, and the vendor Loasehold cannot procure an abstract of the lessor's title, this property. fact should be stated in the conditions, or the vendor will be bound to show the lessor's title to demise.(o)

A purchaser of a leasehold estate must covenant Covenant by with the vendor to indemnify him against the rent leasehold. and covenants in the lease, although he is not expressly required to do so by the conditions of sale.(p)

And although a purchaser is not required by the Verbal conditions of sale to give an indemnity against the agreement rent and covenants, and an assignment is actually chaser as to executed without any indemnity being given, yet against the even a verbal agreement by the purchaser before rents. the sale to secure such indemnity, will be carried into a specific execution if it be distinctly

(a) See Sug. V. & P. ch. l. City of London v. Dias, I East, 237. The As to the case was thus: The city of London let an estate by suction for a term of term rent. years according to certain conditions of sale, by which it was stipulated that the purchaser should pay a certain rent before the lease was granted, which he accordingly agreed to do;—it was held that the money to be paid could not be strictly called rent, as the relation of landlord and tenant not having commenced, yet the parties intended the money should be paid.

having commenced, yet the parties intended the money should be paid, and that it must be paid accordingly.

(o) Ogilvie v. Fuljambe, 3 Mer. 53. Fildes v. Hooker, 2 Mer. 424; and Lessor see Souter v. Drake, 3 Nev. & M. 40. 5 B. & Adol. 992. It appears that title. although it was stated in the conditions of sale of leasehold property that the vendors should not produce the lessor's title, yet, upon the title of the lease being defective, and the purchaser refusing to complete the purchase, it was held that he was not precluded from inquiring aliunde into the lessor's title.—Shepherd v. Keatley, 4 Tyr. 571. 1 C. M. & R. 117.

(p) Pember v. Mathers, 1 Bro. C. C. 52; and see Doe v. Bateman, 2 B. & A. 168. Staines v. Morris, 1 Ves. & B. 9.

Where the vendor is only an assignee.

When vendor is executor of leasehold property.

proved.(q) But where a vendor is only an assignee of a leasehold estate, and is not bound by covenant to pay the rent and perform the covenants in the lease, his liability to do so ceases upon his assigning the estate over, and consequently, in such a case, there is not anything for a purchaser to indemnify Yet under a contract for the assignagainst.(r)ment of a term, whether from the original lessee or a mesne assignee, it seems the purchaser must covenant for indemnity against payment of rent and performance of covenants, though he cannot have a covenant for the title from the assignor as being an executor, and also by express stipulation.(s)

Cases decided as to conditions of sale.

The conditions of a sale by auction printed and pasted under the auctioneer's box, where he declares that the conditions are as usual, is sufficient notice to purchasers of the conditions.(t) The verbal declarations of an auctioneer at the time of the sale are not admissible evidence to contradict the printed conditions.(u) The printed particulars under which a sale by auction is held cannot be varied by parol evidence of the verbal statement of the auctioneer at the time of the sale, either as to the parcels, or qualities of the subject matter of sale.(v)

Incidents of sale.

A bidder at an auction under the usual conditions that the highest bidder should be the purchaser, may retract his bidding at any time before the hammer is down. (w)

Purchaser of several lots.

If, on a sale by auction, the same person is declared the highest bidder for several lots, a distinct contract arises for each lot.(x)

Reserved bidding.

If the owner employ a person to bid for him the sale is void, although only one such person be employed, and although he is to bid up to a certain

(q) See Pembers v. Mathers, 1 Bro. C. C. 52.
(r) Taylor v. Shum, 1 Bos. & Pul. 21.
(s) Doe v. Bateman, 2 B. & A. 168. Staines v. Morris, 1 Ves. & B. 9.
(t) Mesnard v. Aldridge, 3 Esp. 271.
(u) Gunnis v. Erhart, 1 H. B. 289; and see Powell v. Edmunds, 12

East, 6. Stack v. Highgate Archway Company, 5 Taunt. 792.
(v) Shelton v. Livins, 2 C. & J. 411. 2 Tyr. 420.
(w) Payne v. Cave, 3 T. R. 148. (x) Emmerson v. Heelis, 2 Taunt. 28, S. P. Roots v. Dormer, 4 B. & Adol. 77. 1 Nev. & M. 667.

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sum only, unless it is announced at the time that there is a person bidding for the owner.(y) puffers are employed it is a fraud on the real bidders, and the highest bidder cannot be compelled to complete the contract.(z) And where all the bidders at an auction, except the buyer, were bidding for the seller without notice, and the buyer is thereby induced to give more than the value, neither courts of law nor equity will support it.(a) But the circumstance that a person bid at an auction under the private direction of the vendors, for the purpose of preventing a sale under the sum specified as the value, is no objection to specific performance, especially in a case where the vendors are assignees under a fiat in bankruptcy, and the purchaser is not present, but purchases by an agent.(b) Where, at a sale by auction, the seller's agent bid for the purchaser; a specific performance was refused.(c) The employment of a puffer at a sale by auction, of property seized under an extent by an agent of the crown, to whom a bidding is reserved by the conditions of sale, vitiates the sale.(d)

In an action against a purchaser for not com-Non-complipleting his contract of leasehold premises, the the contract. vendor who was possessed of a lease in proving his title, must prove the execution of the original lease, as well as of the mesne assignments to himself. (e) Immediately after the sale by auction an agreement to complete the purchase should be signed by the parties or their agents, as sales of estates are within

the statute of frauds. (f)

(c) Twining v. Morrice, 2 Bro. C. C. 326.
(d) Rex v. Marsh, 3 Y. & I. 331.
(e) Laythorpe v. Bryant, 1 Scott, 327. 1 Bing. N. R. 421. 1 Hodges, 19. But quere, whether he is bound to prove the execution of the original lease when he is an assigner.
(f) See Walker v. Constable 1 P. 5 D. 200.

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⁽y) Wheeler v. Collier, M. & M. 125. (z) Howard v. Castle, 6 T. R. 642. (s) Bramley v. Alt, 3 Ves. jun. 694. (b) Smith v. Clarke, 12 Ves. Jun. 477.

⁽f) See Walker v. Constable, 1 B. & P. 306. 2 Esp. 650, S. P. Stansfield v. Johnson, 1 Esp. 101; and see Emerson v. Heelis, 2 Taunt. 38; and Hinde v. Whitehouse, 7 East, 558. 3 Smith, 538; and see Bucks master v. Harrop, 7 Ves. jun. 341.

THE FOLLOWING ARE THE MEMORANDUMS OF AGREE-MENT USUALLY WRITTEN UNDER, OR SUBJOINED TO, THE CONDITIONS:-

To be signed

"I do hereby acknowledge that E. F. hath this eer or agent. day been the highest bidder and become the purchaser of lot 5, as described in the particulars of sale above written, (or hereunto annexed,) at the sum of £ ----, and that he has paid into my hands the sum of £ ----, as a deposit, and in part of the purchase money; and I do hereby agree and declare, that the said particulars, and the several conditions subjoined thereto, on the part of the said vendor, are and shall be considered as the terms and conditions of the said sale on his part, and to be by him fulfilled and observed accordingly." As witness my hand this, &c.

(2.)

To be signed by the purchaser.

"I do hereby acknowledge that I have this day purchased by public auction the lot 5, as described in the annexed particulars of sale, upon and subject to the conditions thereto subjoined, at the sum of £ ----, and I do hereby engage to perform the said conditions on my part accordingly." As witness my hand, &c.(g)

(3.)

A short form.

"It is hereby agreed and declared, by and between A. B., of, &c., the vendor of the estate mentioned in the foregoing particulars of sale, (if the agent signs, say by C. D., of, &c., his agent duly authorized in this behalf,) and E. F., of, &c., that he, the said E. F., has become the

Receipt for purchase money.

(g) A receipt for the purchase money is an agreement within the statute.—Coleman v. Upcot, 5 Vin. Abr. 527. Buckhouse v. Crossby, 2 Eq. Ca. Abr. 32. But every agreement must be stamped before it can be read; and as this ought to be done, the court will permit a cause to stand over to get the agreement stamped, and will assist either party in obtaining it for that purpose.

purchaser of the hereditaments mentioned and comprised in the foregoing particulars, and that the sum of £ --- hath this day been paid down by the said C. D. to the said, &c., by way of deposit, and in part of the said purchase money; and that the said particulars and the foregoing conditions of sale shall be taken as the terms of agreement for the sale and purchase respectively, and enter into articles as soon as the same can be prepared for completing the purchase, agreeable to the said conditions of sale." As witness, &c.

THE FOLLOWING ARE THE NOTICES OF APPOINT-MENT OF A RESERVED BIDDER, AND OF HIS ACCEPTANCE THEREOF, TO BE DELIVERED THE AUCTIONEER: -- (h)

" To Mr. C. D., auctioneer.

"Take notice, that I, the undersigned A. B., of a reserved of, &c., the proprietor of the messuage and here-bidder. ditaments advertised to be sold by auction this day, by you, at, &c., have appointed Mr. E. F. to bid for the same; and that if he shall buy in the same premises at such sale, it will be solely on the account and for the use of me, the said C.D., the owner thereof." Dated, &c.

(2.)

" To Mr. A. B., auctioneer.

" Take notice, that I, the undersigned E. F., acceptance have accepted the above appointment, and that if bidder.

Notice of

Notice of appointment

(A) If the owner of estates sold by suction, or any other person on his behalf, buy in the same without fraud or collusion, no auction duty will become payable, (see 19 G. III., c. 56, s. 12,) provided notice be given in writing (28 G. III., e. 37, s. 20) to the auctioneer before such bidding, signed by the owner, and the person intended to be the bidder, the latter being appointed by the former, and having agreed accordingly to bid at the sale for his use, and provided the delivery of such notice be verified by the oath of the auctioneer, and also the fairness of the transaction to the best of his knowledge. The known agent of the owner may give such notice, or appoint a bidder in the same manner as the principal, such notice being verified as aforesaid. Every notice must be produced by the suctioneer, at the time of his passing his account of the sale, to the officer authorised to pass the account, and left with the officer.—48 G. III., c. 93, s. 1. G. III., a. 93, s. l.

A A 3

I shall bid for or buy in the above-mentioned premises advertised to be sold by auction by you, this day, the same will be bid for, purchased, and bought in, by me, for the sole use of the said C. D., as the owner or proprietor thereof." Dated, &c.

Cases as to in particulars and conditions of sale.

Where a memorandum indorsed on the conditions memoran-dums signed of sale is signed by the purchaser only, and letters are subsequently written by the vendor to the purchaser's attorney, distinctly referring to the contract, and insisting upon the completion of the purchase, this contract and the letters together constitute a sufficient note or memorandum within the statute of frauds to enable the vendee to sue the vendor (although he did not sign the agreement) for the expenses of investigating the title if defective.(i) And where, upon the face of such contract or by reference, it does not appear of whom the property is purchased, letters written by persons in the character of vendors may be connected with the contract for supplying this defect.(j)

A purchaser was held bound by his contract where he purchased leasehold premises at an auction, and signed a memorandum of the purchase on the back of a paper containing the premises, the name of the owner, and the conditions of sale, although the same was not signed by the vendor.(k)

The signature of the auctioneer's clerk as a witness is not a sufficient signing as agent for the vendor to satisfy the statute of frauds. (1)

It appears that a purchaser may recover his deposit, and duty paid to the auctioneer, upon his abandoning an unwritten contract for sale of land

⁽i) Dobell v. Hutchinson, 5 Nev. & M. 251. 3 Adol. & Ellis, 355. 1 Har. & Woll. 394.

⁽j) Id.
(k) Laythoarp v. Bryant, 2 Bing. N. R. 735.
(l) Gosbell v. Archer, 4 Nev. & M. 485. 2 Adol. & Ellis, 500. 1 Har. & Woll. 31.

on defect of title; but the expenses of investigating the title cannot be recovered without proof of a written contract binding on the vendor, nor interest upon the deposit.(m)

It seems that the auction duty becomes payable Auction duty.

though the sale is imperfect. (n)

An auctioneer cannot, in conducting a sale by Auctioneer. auction, deviate from the strict terms of the conditions; if he does he will be personally amenable for all the consequences of his so doing, as well in respect of his liability to actions to be brought for duties demandable as against him, as of losing his right to bring actions for remedies to which he might otherwise resort; and the proper course to be pursued by him as such auctioneer, where he has been called upon to pay the officer of the crown the duties on a sale by auction, is to proceed by action on the implied assumpsit raised by law against the vendor as his employer, which he may maintain if he has acted properly in conducting the sale, leaving the owner his remedy against the bidder on the expressed contract arising on the terms of the conditions.(0)

If an auctioneer's bond to the crown, under 19 G. III., c. 56, s. 7, is forfeited, the penalty is due, and is not merely a security to compel an ac-

count.(p)

⁽m) Id.
(n) Jones v. Nanney, M'Clel. 25. 13 Price, 76.
(o) Id.

^{(0) 1}a. (p) Rex v. Christie, 2 Anst. 596.

COVENANTS.(q)

(1.)

Covenant by several, each for himself alone.

Several.

And each and every of them the said A. B., C. D., and E. F., so far as relates to his and her own acts and deeds, but not further or otherwise, doth hereby for himself and herself, his and her heirs, executors, and administrators, covenant, &c.(r)

(2.)

By two, jointly and severally.

Joint and several.

AND the said A. B. and C. D. do hereby for themselves, their heirs, executors, and administrators; and each of them doth for himself, his heirs, executors, and administrators.(s)

(3.)

By three or more severally as to their own Acts, and Acts of their respective Wives.

Several for themselves and wives. And each and every of them, the said A. B., C. D., and E. F., severally, separate, and apart, from the others of them, doth hereby for himself and herself, and his and her respective heirs, executors, and administrators, and as, to, and concerning only the acts, deeds, and defaults, of himself and herself respectively, and his and her respective heirs, executors, and administrators, and also of

Variation.

(q) For general covenants, see "Leases."
(r) Or thus: "And the said A. B., so far as relates to his own acts and deeds only, but not further or otherwise, doth for himself, his heirs, executors, and administrators; and the said C. D., so far, &c., doth, for himself, his," &c.
(e) Or thus: "And the said A. B. and C. D. do hereby injuries."

(s) Or thus: "And the said A. B. and C. D. do hereby jointly for themselves, their (heirs), executors, and administrators, and each of them severally doth hereby for himself, his (heirs), executors, and administrators, covenant and declare to and with the said E. F., his," &c.

his said wife, her heirs, executors, and administrators.(t)

(4.)

By joint Tenants.(u)

And the said A. B., as to his estate and interest Joint of and in the said hereditaments, doth for himself, tenants. his heirs, executors, and administrators, and for his and their acts and deeds only, but not further or otherwise; and the said C. D. as to, &c.

(5.)

. By two entitled in undivided Moieties.

And the said A. B., so far as relates to or con-Moieties. cems the said undivided moiety, or equal half part or share of and in the said messuages, &c., and the right and title to convey, quiet enjoyment, freedom from incumbrances, and further assurance of the same, doth for himself, his heirs, executors, and administrators; and the said C. D., so far, &c.

(f) Or thus: "And each of them, the said parties of the first and second Variations. parts respectively, not being a married woman, doth hereby for himself and herself, and for his and her own heirs, executors, or administrators. acta, deeds, and defaults, respectively nevertheless, the said A. B. and C. D. each covenanting for his own wife, and her heirs, &c., acts, deeds, and defaults." Or after this manner: "And the said A. B. and C. D., and E. F. and G. H., doth hereby severally for himself and herself, and his and hereby hereby severally for himself and herself, and his and her heirs, executors, and administrators, and only as to and concerning his and her own acts, deeds, and defaults, respectively nevertheless, each of them, the said A. B. and C. D., also covenanting for his own

wife, and her acts, deeds, and defaults, respectively."

(a) By tenants in common: "And the said A. B., as to his share of and Tenants in in the said messuage, &c., doth for himself, his heirs, executors, and admicommon. nistrators, and for his and their own acts and deeds only, but not further or otherwise; and the said C. D., as to his share," &c.

If entitled in shares, say, "And the said A. B. for himself, his, &c., and Shares.

as, to, and concerning only, the (third) part or share and title of him, the said A. B., and the acts, &c., of himself, his heirs, &c., and all persons claiming. &c.. as far as concerns the same share and title; and the said claiming, &c., as far as concerns the same share and title; and the said C. D., &c. (similar to the last).

By two, as to different estates: "And the said A. B. doth hereby for Different himself, his, &c., and as far only as relates to or concerns the said mes-estates.

suage, &c., situate, &c., and first hereby assigned, or otherwise assured,
or intended so to be, and the acts, deeds, default, and title, relating thereto; and the said C. D. doth hereby, &c., so far, &c., secondly hereby assigned.

(6.)

Common Form by Husband for himself and Wife.

Husband and wife. AND the said A. B. doth for himself, his heirs, executors, and administrators, and for the said C., his wife, and her heirs, she hereby consenting thereto.

(7.)

By two, as to their distinct Interests.

Distinct interests. And each of them, the said A. B. and C. D., doth for himself and herself, and his and her heirs, executors, and administrators; nevertheless, so only that each of them, the said A. B. and C. D. respectively, and his and her heirs, executors, and administrators, may be answerable proportionally, according to the value and interest of the said A. B. and C. D. respectively in the premises.

(8.)

Short Form of Covenants in an Assignment of Lease, including the usual Covenant by Assignee for Payment of the Rent and Performance of the Covenants, and the usual Indemnity against same.

That lease is good.

And the said A. B. for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, to and with the said C. D., his executors, administrators, and assigns, that notwithstanding any act, deed, matter, or thing, by him, the said A. B., (or the said E. F. the testator,) made, done, or permitted, to the contrary,(v) the said

As to the qualifying words.

(v) These words at the commencement of the covenants for title have been held to qualify them all—the connexion being kept up by the conjunctions, "and also," "and further," "and that," "and moreover."—See Hessee v. Stevenson, 3 Bos. & Pul. 574. The usual words are, that "for and notwithstanding any act, deed, matter, or thing, by him, the said A. B., made, done, executed, or committed, or knowingly occasioned, permitted, or suffered, by him to the contrary." But the words in the above precedent, "that notwithstanding," is more appropriate than "for and notwithstanding," and the words "made, done, or permitted," comprise the entire import of the above qualification to the covenants. (In respect to

recited indenture of lease is a good and valid lease, not forfeited or otherwise become void or voidable; AND also, that he, the said A. B., now hath in him- Hath right self good right to assign the said messuage and to assign. hereditaments hereby assigned, with the appurtenances, unto the said C. D., his executors, administrators, and assigns, for all the remainder of the said term of —— years, according to the true intent and meaning of these presents; AND that it shall For quiet and may be lawful to and for the said C. D., his enjoyment. executors, administrators, and assigns, immediately after the execution of these presents, at all times hereafter during the said term, to enter upon and enjoy (w) the said messuage and hereditaments hereby assigned, with the appurtenances, and to receive and take the rents and profits thereof, for his and their own use and benefit, without any interruption whatsoever, from or by the said A. B., his executors or administrators, or any person claiming through or in trust for him; AND that free and Free from clear(x) or otherwise by him, the said A. B., his incumbrances.

the persons against whose acts a vendor is bound to covenant, it seems qualified where the vendor was himself the purchaser, and obtained proper covenants for the title, then he is not bound to enter into covenants extending beyond his own acts.—14 Ves. 239. But where the vendor was not himself the purchaser, but acquired the estate as heir or devisee, or under a voluntary settlement, then he is bound, according to the usual practice, to enter into covenants extending to the acts of the last purchaser, whether according to the settler.

enter into covenants extending to the acts of the last purchaser, whenever encestor, testator, or settler.)

(w) The usual words of this covenant, "to enter into and upon, have, hold use, occupy, possess, and enjoy;" but the words in the precedent, ening covening to enter upon and enjoy," are quite sufficient, particularly when it is added that he, the assignee, is to receive the rents and profits without interruption, which word "interruption" will supply the place of the usual words, "let, suit, trouble, eviction, ejection, expulsion, hindrance, interruption, or denial, whatsoever;" and the subsequent part of this covenant usually runs, "of or by the said A. B., his executors or administrators, or by any other person or persons lawfully or equitably claiming or to claim by, from, under, or in trust for, him, them, or any of them."

(2) The words of the covenant against incumbrances usually are, "And that free and clear, and for ever discharged, or otherwise, by the said

(2) The words of the covenant against incumbrances usually are, "And that free and clear, and for ever discharged, or otherwise, by the said 4. B., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against, all other states, titles, troubles, charges, debts, and incumbrances, whatsoever, either already had, made, executed, occasioned, or suffered, by the said 4. B., his executors or administrators, or by any other person or persons lawfully or equitably claiming or to claim by, from, or under, or in trust for him, them, or any of them." The words "estates, titles, troubles, items, charges, and incumbrances, whatsoever," as in the above precedent, are sufficient, and in small purchases the form is frequently out down to them in practice. them in practice.

heirs, executors, or administrators, well and sufficiently indemnified of, from, and against, all estates, titles, troubles, liens, charges, and incumbrances, made, done, or permitted, by the said A. B., or any person claiming through or in trust for him; (or by the said E. F., the testator, or any person claiming through or in trust for him;) (save and except

claiming through or in trust for him, (or through or in trust for the said E. F., the testator,) shall and will, at the request and charges of the said C. D., his executors, administrators, and assigns, make and perfect all further assignments (y) and assurances that may be necessary for the more effectually or satisfactorily assigning the said messuage and hereditaments hereby assigned, with the appurtenances, unto the said C. D., his executors, administrators, and assigns, according to the true intent

the rents, covenants, and agreements, in the said recited indenture of lease contained, on the tenant or lessee's part to be paid, performed, and kept;)

And for furance assurance.

And moreover, that he, the said A. B., his executors and administrators, and all persons whosoever

ther assurunce.

and meaning of these presents, as by the said C. D., his executors, administrators, or assigns, or his or their counsel in the law shall be devised and tendered Covenant by to be executed; AND the said C. D., for himself, the assignee his heirs, executors, and administrators, doth hereby to pay the rent and incovenant, promise, and agree, to and with the said demuity A. B., his heirs, executors, and administrators, lessec. that he, the said C. D., his heirs, executors, and administrators, will at all times hereafter well and truly pay the rents, and fulfil and keep the covenants and agreements reserved and contained in the said recited indenture of lease, which, on the part of the lessee or his assignee, are or ought to be

paid, fulfilled, and kept, in respect of the messuage

and hereditaments hereby assigned during the remainder of the said term, and will effectually in-

⁽y) The words "make and perfect all further assignments and assurances," are sufficient to comprise the usual words of this covenant for further assurance.

demnify the said A. B., his heirs, executors, administrators, and assigns, and his and their lands, tenements, chattels, and effects, of, from, and against, the same rent, covenants, and agreements, and all actions, suits, claims, and demands, on account thereof. (z)

(9.)

Covenant by an Assignee to perform Covenants in an original Lease, (except the Covenant for Payment of Rent,) and to indemnify Assignor.(a)

And the said C. D. doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said A. B., his executors, administrators, and assigns, that he, the said C. D., his executors, administrators, and assigns, shall and will from time to time, and at all times hereafter, during the continuance of the said term of ninety-nine years, perform, fulfil, and keep, all and singular the covenants and agreements, except those relating to the said yearly rent of, &c., in the said hereinbefore in part recited indenture of lease contained, on the part of the tenant or lessee to be observed and performed, so far as the same ought to be observed and performed, in respect of the said messuage or tenement hereinbefore assigned, or expressed and intended so to be, and of and from all the said covenants and agreements to the extent aforesaid, and of and from all costs, charges, and expenses, to be incurred or sustained by reason of, or on account of, any breach, neglect, or default of, or in observance or performance of, the same respectively as aforesaid, shall and will save barmless and keep indemnified the said A. B., his executors, administrators, and assigns, and his and

⁽²⁾ For a full form of covenant by the assignee to pay rent and perform covenants, and to indemnify the lessee therefrom, see Assignments, p. 157, of No. 1; and see p. 167, of No. 4; and see also p. 240.

⁽a) This covenant is applicable to an assignment to a purchaser of one of several houses held by the assignor at one entire rent.— See Fildes v. Hooker, 3 Madd. 193. Warren v. Richardson, 1 You. 1.

their estates and effects whatsoever and wheresoever.

(10.)

Covenant by Landlord to repair Walls, Roof, and Outside of Premises.

And the said A. B. for himself, his heirs, executors, administrators, and assigns, doth hereby covenant and agree with the said C. D., his executors, administrators, and assigns, that he, the said A. B., his heirs or assigns, shall and will at all times during the continuance of the term hereby granted, at his or their own costs and charges, well and sufficiently repair, and keep in repair, the walls, roof, and outside, of the premises hereby demised, and also shall and will, once in every four years during the said term, paint in good and proper oil colours the doors, windows, frames, rails, and other the outside wood and iron work of the said premises.

(11.)

Covenant for Lessor to enter and view the State and Condition of Premises on one Day's Notice being given, and for Tenant to repair on Notice for such purpose.

To enter.

And also, that it shall and may be lawful to and for the said A. B., his executors, administrators, and assigns, with or without surveyors and workmen in his or their company, twice or oftener in every year during the said term, at all seasonable times in the day, to enter and come into and upon the said messuage or tenement and premises hereby demised, or any part thereof, to view, search, and see, the state and condition of the same, notice of such intention to view being given unto the said C. D., his executors, administrators, or assigns, one day at least before the same shall take place; and of all decays, defects, and wants of reparation and amendment, which upon every such view or views

On notice.

shall be found, to give or leave notice or warning Tenant to in writing at or upon the said demised premises, repair notice. unto or for the said C. D., his executors, administrators, or assigns, to repair and amend the same within three calendar months then next following; within which said time or space of three calendar months next after every such notice or warning shall be so given or left as aforesaid, he, the said C. D., for himself, his executors, administrators, and assigns, doth hereby covenant, promise, and agree, to and with the said A. B., his executors, administrators, and assigns, to repair and amend all such decays, defects, and wants of reparation and amendment, accordingly, except as aforesaid, under the inspection of, and in such manner as shall be approved by, the said A. B., his heirs or assigns, or such persons as shall be appointed by him or them for that purpose; and in default thereof, then that it shall and may be lawful to and for the said A. B., his heirs and assigns, or the persons appointed by him or them as aforesaid, for that purpose, to repair and amend all such defaults and want of reparation whereof such notice shall be so given or left as aforesaid, and to charge the said C. D., his executors, administrators, and assigns, with the costs and expenses of such repairs and amendments as and by way of additional rent, with full and free power and liberty to enter and distrain upon the said demised premises, or any part thereof, for the recovery of such costs and expenses, as in the way of rent in arrear, according to the usual custom of law.

(12.)

Short Covenant to insure against Fire.

And further, that he, the said C. D., his executors, administrators, and assigns, or some or one of them, shall and will at his or their, or some or one of their, own proper charges, from time to time, and at all times hereafter, during the said term

hereby granted, insure, and cause to be insured, the said messuage or tenement and premises from loss or damage by fire in(b) some or one of the public offices of insurance in the city of London(c) or Westminster, and shall and will from time to time during the said term, when thereunto requested, produce and show unto the said A. B., his executors, administrators, or assigns, the policy of such insurance, and also the receipt for the payment of the premium and duty thereon for the then current year; and that he, the said C. D., his executors, administrators, and assigns, shall and will immediately after any accident by fire to the said premises lay out and expend the money to be received by virtue of such insurance in re-building or repairing the said premises as the case may require. (d)

(13.)

For Abatement of Rent in Case of Fire, according to the Nature and Extent of the Damage.(e)

PROVIDED always, and it is hereby declared and agreed, by and between the said parties hereto, that

Insurance office.

(b) Or say, "In the —— insurance office in, &c., for insuring buildings from loss or damage by fire." (Although the office be not named it would be intended to be in some office where insurances against fire are usually effected.)—Doe d. Pitt v. Shewin, 3 Camp. 134.

(c) If the covenant is framed to meet the covenant in the original lease, (as to building,) say, "In the joint names of R. S., of, &c., (the original landlord of the said premises,) his heirs and assigns, and the said C. D., his executors, administrators, or assigns, and keep the same continually so insured during the said term, and will, upon request of the said A. B., his executors, administrators, or assigns, or his or their steward or agent, produce and show the receipt for the premium paid for such insurance for the then current year; and also will, during the said term, as often as the buildings (to be erected on the ground, as the case may be) hereby demised, or any part thereof, shall be burnt down or damaged by fire, forthwith reinstate the same under the direction of the said (or the surveyor of the said) A. B., his executors, administrators, or assigns, and shall and will pay the said hereby reserved rent in the same manner as if no such accident by fire had happened."

(d) If the rent is to be suspended, the following clause should be added: "But it is hereby declared that the said rent hereby reserved, or any part thereof shall not be suspended during the period that the said derained that the said term hereby reserved, or any part thereof shall not be suspended during the period that the said derained that the said term, and the said that the said term and the sa

(d) If the rent is to be suspended, the following clause should be added: "But it is hereby declared that the said rent hereby reserved, or any part thereof, shall not be suspended during the period that the said demised premises, or any part thereof, shall be rendered uninhabitable, or unfit for use, by fire as aforesaid, and before the same shall be re-built or re-in-

stated as hereinbefore provided."

Cesser of term on the destruction (e) If the term is to cease on the destruction of the premises by fire, at the option of the tenant, the following provise will be applicable: "Provided always, nevertheless, and it is hereby agreed, by and between the said parties to these presents, that if the said demised messuage or tene-

in case the said messuage or tenement and premises hereby demised, or any part thereof, shall at any time or times during the said term hereby granted happen to be consumed, destroyed, or damaged, by fire, storm, or tempest, so as to render the same uninhabitable or untenantable, then and in such case the rent hereinbefore reserved for the same, or a just and proportionable part thereof, according to the nature and extent of the injury which the said premises may have sustained, shall be suspended or abated, and all remedies for recovering the same, until the same premises shall have been re-built or repaired by the said A. B., his heirs or assigns, and be in fit state and condition for habitation; and in case of any dispute or difference of opinion between the said parties, with respect to the duration of such suspension, or the amount of such abatement, respectively, or of both, the same shall from time to time be referred to the arbitrament and determination of three indifferent persons, to be named and chosen in the usual manner of arbitration; and the decision of the said three arbitrators, or any two of them agreeing in their award,

ment and erections built, or to be built, on the said demised piece or parcel of premises of ground and premises, or any part thereof, shall at any time or times by fire. during the said term hereby granted be burnt down, demolished, or damnified, by or by means of fire, then and in that case the said C. D., his executors, administrators, or assigns, shall have the option, at any time within fourteen days after such fire, of sixing notice that the term hereby within fourteen days after such fire, of giving notice that the term hereby granted shall cease and determine on the next rent day after such fire; and in that case, and from that time, provided an insurance shall have been made and kept on foot pursuant to the covenant hereinbefore contained, and provided all arrears of rent shall be paid up to that day, the said term shall cease and determine, and the said C. D., his executors, administrators, or assigns, shall be discharged of and from any further payment of the rent hereby reserved, or performance of the covenants, conditions, and agreements, hereinbefore contained; and in that case also, the money which shall become payable by virtue of any such insurance, and the remaining materials of the building, shall become and be the absolute property of the said company, their successors or assigns, or the said A. B., his executors, administrators, or assigns, shall have the liberty of continuing the tenant or tenants under the term hereby granted; and, in that case, if he or they shall reinstate the building so damaged or destroyed by fire to the satisfaction of the surveyor for the time being of the said company, their successors or assigns, and within —— months after such fire, then and in that case the remaining materials of the buildings shall become the property of the said A. B., his executors, adminisings shall become the property of the said A. B., his executors, administrators, or assigns; and as soon as the loss or damages by fire shall be reinstated, the sum to be received on or for such insurance shall be paid to him or them."

shall be final and conclusive upon the said parties hereto, and all persons claiming through or under them respectively.

(14.)

Covenant for a Lessor to affix a Notice to let, and show Premises during the last six Months of the Term.

And also, that it shall and may be lawful for the said A. B., his executors, administrators, or assigns, or his or their agent, at all times during the last six calendar months of the term hereby granted, to place a notice in writing on the door, or on any window or other conspicuous place of the hereby demised premises, signifying that the same are to be let; and during the said six months to enter and come at seasonable times upon the said premises to show and treat for the same.

(15.)

Covenant to observe the Conditions contained in a former Lease between the same Parties, as if they had been repeated in the present.(f)

⁽f) By adopting this covenant the purpose will be answered, as well as repeating the same covenants in each successive lease of the same land.

covenants and agreements had been inserted in these presents, in relation to the premises hereby demised, save and except the covenant therein contained for payment of the yearly rent of, &c.

(16.)

Covenant of Indemnity against fee farm Rents, with the grant of a Power of Distress.

COVENANT and agree with the said C. D., his Covenant to heirs, appointees, and assigns, that he, the said indemnity. A. B., his heirs, executors, administrators, or assigns, or some or one of them, shall and will from time to time, and at all times hereafter, defend, save harmless, and keep indemnified, the said C. D., his heirs, appointees, and assigns, and every of them, and his and their, and every of their, lands, tenements, goods, chattels, and effects, and particularly the said messuage, &c., hereby assigned and assured to the said C. D., his, &c., as aforesaid, of, from, and against, the said fee farm rent of, &c., and all actions, suits at law and in equity, distresses, claims, and demands, by reason or on account of any default in the said A. B., his, &c., in payment of the same fee farm rent, when and as the same shall become due and payable; AND the said Indefault to A. B. doth hereby for himself and his, &c., grant to distrain. the said C. D., his, &c., that from time to time, and at all times hereafter, when and as often as the said C. D., his, &c., shall pay all or any part of the said fee farm rent of, &c., or all or any part of the costs, charges, and expenses, of any action or distress for recovering or enforcing payment of the same, the said C. D., his, &c., shall or may distrain for the sum or sums which shall have been paid by him or them in or upon all or any part of the lands and hereditaments chargeable with the said fee farm rent, which have been purchased by the said A. B. as aforesaid; and by means of such distress or distresses levy and raise the same sum or sums of money, and for that purpose dispose of such distress

or distresses in the same or the like manner as if such distress or distresses had been for a rent reserved on a lease for years.

(17.)

Covenant by Lessee of a public House not to convert the same into a private House, and for Management thereof.

And that he, the said C. D., his executors, administrators, or assigns, shall not nor will at any time during the continuance of this demise, convert the said messuage into a private house, or use the same, or suffer it to be used, for any other purpose than an inn, tavern, or public house; and shall and will conduct and manage the same in a proper and orderly manner, so as to afford no ground or pretence for discontinuing the licence thereof; but shall and will use his and their best endeavours at all times to increase and extend the custom and business thereof. (q)

(18.)

Covenant in an Assignment of Lease to indemnify Assignee from Evictions on Account of Breaches of Covenant in Lease.

AND also, that he, the said A. B., his heirs, executors, or administrators, shall or will indemnify, save harmless, and keep indemnified, the said C. D., his heirs, executors, administrators, and as-

Covenant by tenant to lord.

(g) If the landlord is a wine merchant or brewer, &c., and binds the tenant to buy liquors from him, add, "And further, that the said C. D., buy liquors from land-lord.

his executors, administrators, or assigns, shall not nor will during the said term hereby demised buy, receive, sell, or dispose of, either directly or indirectly, or permit to be bought, received, sold, or disposed of, either directly. rectly or indirectly, in, upon, out of, or about, the said messuage or tenement, and public house and premises, hereby demised, or any part thereof, any wine, brandy, rum, hollands, geneva, shrub, beer, ale, porter, stout, purl, perry, cider, or any other spirit or liquor whatsoever, other than such as shall have been bona fide purchased of the said A. B., his executors, administrators, or assigns, provided he or they shall be willing to supply the same to the said C. D., his executors, administrators, or assigns, at the fair current market price thereof."

signs, of and from all convictions, ejectments, suits at law and in equity, costs, losses, charges, damages, and expenses, whatsoever, by reason or on account of any breach or default of all, any, or either, of the covenants, conditions, and agreements, contained in the said indenture of lease as far as the same covenants, conditions, and agreements, relate to or concern, and are henceforth to be performed, in respect of all or any of the messuages or tenements, buildings, and premises, comprised in the same indenture of lease, and not hereby assigned, or otherwise assured, or intended so to be.

(19.)

Covenant not to erect Buildings against Part of Premises.

COVENANT that he, the said —, his executors, administrators, or assigns, or any person or persons claiming or to claim by, from, or under, or in trust for, him or them, or the said —, the lessee, shall not nor will at any time hereafter, during the term hereby granted or assigned, make, erect, or set up, any building, wall, partition, or other erections, on the, &c., part of the said messuage or tenement and buildings hereby assigned, or intended so to be, so as to obstruct the light or air from coming to the same messuage or tenement and building as it hath been accustomed to do.

(20.)

Covenant not to erect a Mill to deteriorate one conveyed.

COVENANT, &c., that he, the said A. B., his &c., or any person or persons claiming or to claim under him or them, shall not nor will at any time or times hereafter, without the consent in writing of the said C. D., his, &c., erect or build, or cause or procure to be erected and built, any mill upon (or upon any cut or carrier to be made from) the stream running from

the mill assigned by the within written indenture, and being within the distance of, &c., from the same mill, or cause to be done any act whatsoever which shall or may obstruct or retard the motion of the main wheel of and belonging to the said mill; and that he, the said A. B., his, &c., shall or will pay, or cause to be paid, to the said C. D., his, &c., as and for liquidated damages, the sum of, &c., for each and every day, or any part less than an entire day, during which the said C. D., his, &c., shall receive any injury from the breach of any or either of the stipulations hereinbefore contained; and that the right to such stated damages shall not be or be deemed a waiver of the right of the said C. D., his, &c., to abate any nuisance to the said mill of the said C. D., his, &c., or to preclude him or them from the right of being relieved by the injunction of a court of equity, or any other means legal or equitable.

(21.)

Deed of Covenant by Way of Indenture of Apprenticeship to a Farmer and Grazier.

Parties.

Recital of surreement for apprenticeship.

Considers-

This indenture made the —— day of, &c., BE-TWEEN A. B., of, &c., and C. B., son of the said A. B., of the one part, and D. E., of, &c., of the other part; WHEREAS the said D. E. hath agreed with the said A. B. to take the said C. B. as his apprentice, for the term of —— years, to be taught and instructed in the art, science, business, or employment, of a farmer and grazier, in consideration of the sum of £ ---, to be paid to the said D. E. at the time of the execution of these presents, and subject to other the terms and agreements hereinafter contained. Now this indenture witness-ETH, that in pursuance of the said agreement, and in consideration of the sum of £ ——, of lawful money of Great Britain, to the said D. E., in hand, well and truly paid by the said A. B., at the time of the sealing and delivery of these presents, the re-

ceipt whereof the said D. E. doth hereby acknowledge, he, the said D. E., doth hereby for himself, Covenant by his heirs, executors, and administrators, covenant, instruct promise, and agree, with and to the said A. B., his executors and administrators, in the manner following, (that is to say,) that he, the said D. E., shall and will during the term of —— years, according to the best of his skill and knowledge, teach and instruct, or cause to be taught and instructed, the said C. B., in the said art, science, business, or employment, of a farmer and grazier, and in all matters and things incident or relating thereto; AND also, shall and will during the said term find And to proand provide the said C. B. with suitable and suffi- vide suitable cient diet and lodging in the house of him, the said D. E., in a like and equal manner with the rest of his family, he, the said C. B., at all times taking his meals with the said D. E., and his family, and not with the menial or domestic servants of the said D. E.; and in consideration of the covenants and Apprentice agreements hereinbefore contained on the part of to serve. the said D. E., he, the said A. B., doth place and bind the said C. B. unto and with the said D. E., for the said term or period of ---- years, to be computed from the date of these presents, and doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and declare; and the said C. B. doth hereby freely and voluntarily consent and agree, to and with the said (master), his executors and administrators, that he, the said C. B., shall and will, during all and every part of the said term of —— years, well, truly, and faithfully, serve the said D. E. as an apprentice to the said art, science, business, or employment, of a farmer and grazier, and diligently attend to the business and concerns thereof, and shall not nor will do any wilful damage or injury to the said D. E., nor knowingly suffer the same to be done without acquainting the said D. E. therewith, but shall and will in all respects acquit and demean himself as an honest and faithful apprentice ought

In case of to do; AND it is hereby mutually agreed and dethe execumaster.

the master, clared, by and between the said parties to these the execu-tors to pro- die hace that in case the said D. E. shall happen to vide a new die before the end of the apprenticeship of the said C. B., then and in such case the executors or administrators of him, the said D. E., shall and will, as soon as may be after his decease, find and provide a new and other proper master following the art, science, business, or employment, of a farmer and grazier, and at their own costs and charges assign and turn over the said C. B. to such new master for the residue which shall be then to come and unexpired of the term of his apprenticeship, upon the same terms, or upon terms equally advantageous to the said C. B., as are contained in these presents; and in default thereof, shall and will pay, or cause to be paid, unto the said A. B., his executors, administrators, or assigns, the sum of £for every year of the said term of ---- years hereinbefore mentioned, which shall be then to come and unexpired; AND lastly, for the true performance and observance of the several covenants and agreements herein contained, on the part of the said A. B. and D. E. respectively, and their respective executors and administrators, to be performed and observed, each of them, the said A. B. and D. E, doth bind himself, his heirs, executors, and administrators, unto the other of them, his executors, administrators, and assigns, in the penal sum of £ ----, of lawful money of Great Britain, firmly by these presents, as or by way of ascertained or liquidated damages. In witness, &c.

Penalty.

(22.)

Another Form to a Farmer in Husbandry(h) where the Apprentice binds himself.

Parties.

This indenture made, &c., BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other

(h) See stat. 5 Eliz. c. 24, s. 25.

part; whereas, the said A. B., of his own free will, Recital. hath agreed to bind himself to the said C. D., to be taught and instructed in the art, science, business, or employment, of a farmer and husbandman, for the term of —— years, under and subject to the terms and conditions hereinafter contained. Now Testatum. THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the covenants and agreements hereinafter contained, on the part of the said C. D. to be performed and observed, he, the said A. B., doth by these presents Apprentice bind and place himself unto and with the said agrees to C. D. as his apprentice, to be taught or instructed in the art, science, business, or employment, of a farmer and husbandman, for the term of ---- years from the date hereof, during all which said time he, the said A. B., shall and will well and faithfully serve his said master as his apprentice, and diligently attend to the concerns and business of a farmer and husbandman, and shall not nor will do any wilful injury to the said C. D., or suffer or permit the same to be done without acquainting the said C. D. therewith, but shall and will acquit himself as an honest and faithful apprentice ought to do; AND in further pursuance of the said agree- Master ment, and in consideration of, &c., to the said agrees to accept, and in consideration of, &c., to the said cept and C. D., in hand, well and truly paid by the said take the said apprentice, A. B., at or before the execution of these presents, and to teach the receipt, &c., he, the said C. D., hath agreed to and instruct accept and take, and by these presents doth agree to accept and take the said C. D. as his apprentice during the said term, and doth hereby for himself, his executors, and administrators, covenant, promise, and agree, to and with the said A. B., his executors, administrators, and assigns, in the manner following, (that is to say,) that he, the said C. D., according to the best of his power, skill, and knowledge, shall and will during the said term of years, teach and instruct, or cause to be taught and instructed, the said A. B., in the art, science, business, or employment, of a farmer and

And to pay sums for preptice.

husbandman, and all things whatsoever incident or belonging thereto, in such manner as he, the said C. D., now or any time hereafter during the said term shall use or practice the same; AND further, board of ap that the said C. D. shall and will well and truly pay, or cause to be paid, unto the said A. B., or his assigns, during the said term of —— years, or during so much thereof as the said A. B. shall contime his apprentice as aforesaid, the several sums of money, and payable at the several times, in lieu and full satisfaction of the board and lodgings of the said apprentice during the said term, (that is to say,) the sum of £ —, of lawful money of Great Britain, for the first year of the said term; the sum of £ ---, of like lawful money, for the second of the said term; the sum of, &c., (and so on for the number of years of the apprenticeship as may be agreed upon,) together with the proportionable part of either of the said sums which may happen to be due at any sooner determination of the said apprenticeship, to be computed from the last quarterly day of payment thereof up to the day of such determination, the said several and respective sums of, &c., to be paid and payable by four equal quarterly payments, on the —— day of, &c., the - day of, &c., the --- day of, &c., and the day of, &c., in every year, the first payment thereof (or of such proportionable part of the said sum of £ ---- as shall then be due) to begin and be made on, &c., now next ensuing, and every of them to be free and clear of all manner of deductions whatsoever; which said, several, and respective, sums of, &c., the said A. B. doth hereby for himself, his executors, administrators, and assigns, covenant and agree, to and with the said C. D., his executors and administrators, to take and accept in lieu of, and in full satisfaction for, his board and lodgings during the said term; AND moreover, the said C.D. doth hereby for himself, his executors and administrators, covenant, promise, and agree, to and with the said A. B., his executors, adminis-

Apprentice agrees to accept such sums.

trators, and assigns, that if the said A. B. shall happen to depart this life at any time within twelve calendar months, to be accounted from the date of these presents, he, the said C. D., his executors or administrators, shall and will return and pay unto the executors, administrators, or assigns, of his said apprentice, £ —— of the said sum of £ —— so paid by him, the said A. B., as aforesaid; AND lastly, for Penal clause the true performance of the several covenants and agreements hereinbefore mentioned and contained, on the respective parts of each of them, the said A. B. and C. D., their executors and administrators, to be taught, served, done, and performed, in the manner hereinbefore mentioned, and according to the true intent and meaning of these presents, they, the said A. B. and C. D., do bind themselves unto each other, and unto the executors, administrators, and assigns, of each other, in the sum of £ ----, firmly by these presents, by way of ascertained or liquidated damages. In witness, &c.

(23.)

Deed of Covenant for the Production of a

This indenture made the —— day of, &c., BE- Parties. TWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part, (recite the lease and the assignment of part of the premises to C. D.). AND WHEREAS, upon the treaty for the said pur- Recital. chase, it was agreed that the said A. B. should enter into such covenant for production of the said in part recited lease as hereinafter is contained. Now this indenture witnesseth, that in pursu- Witnessing

⁽i) The following concise form of covenant may be used in an assignment of a lease for the production of the original lease and assignment: "And further, that he, the said A. B., his executors, administrators, and assigns, will during the said term, (if not prevented by fire or other inevitable accident,) at the request and costs of the said C. D., his executors, administrators, or assigns, produce and show, for the purpose of defending and proving his or their title to the said premises, an indenture of lease dated, &c., whereby the said R. S. (original landlord) demised the said premises with others to one T. U., and also a deed poll indorsed thereon, whereby the said T. U. assigned the said premises to the said A. B."

ance of the aforesaid agreement, and in consideration of the premises, the said A. B. for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, with and to the said C. D., his executors, administrators, and assigns, in manner following, (that is to say,) that he, the said A. B., his executors, administrators, or assigns, shall and will from time to sime, and at all times hereafter, unless prevented by fire or other inevitable accident, upon every reasonable request in writing made to him or them for that purpose, and at the proper cost and expense of the said C. D., his executors, administrators, or assigns, produce and show forth, or cause and procure to be produced and shown forth, unto the said C. D., his executors, administrators, or assigns, or his, their, or any of their, counsel in the law, or agent, or attorney, or at any trial, hearing, commission, or examination, in or directed by any court or courts of law or equity, in any part of the united kingdom of Great Britain and Ireland, and to any arbitrators or umpire lawfully authorised, and upon every other fit and reasonable occasion, the said hereinbefore in part recited indenture of lease, for the maintainance, manifestation, defence, or support, of the estate, interest, right, title, property, or possession, of him, the said C. D., his executors, administrators, or assigns, in or to the said messuages or tenements and premises so assigned to him by the said in part recited indenture of even date herewith, or in any part thereof; (j) AND also, that he, the said A. B., his executors, administrators, or assigns, shall and will from time to time, and at all times hereafter, at the like request, costs, and charges, of the said C. D., his executors, administrators, or assigns, make and deliver, or cause to be made and delivered, to him, the said C. D., his executors, administrators, or assigns, such true and attested

⁽j) If the covenant be for the production of the original lease and meane assignments say, "All and every the deeds, evidences, and writings, mentioned and set forth in the schedule hereunder written."

and other copies of the same indenture, or of any part thereof, or of any covenants, clauses, or agreements, therein contained, as he or they may require, and in the meantime shall and will use all proper care and means to keep the said indenture of lease safe, whole, uncancelled, and undefaced, loss or damage by fire, or other inevitable accident only excepted. Provided ALWAYS, and it is Provise in hereby declared and agreed, by and between the case of dissaid parties to these presents, that if the said A. B., remaining his executors, administrators, or assigns, shall at part. any time hereafter sell or dispose of the other part of the said messuages and dwelling-houses comprised in the said indenture of lease to a purchaser thereof, and shall procure such purchaser to enter into a like covenant to that herein contained with the said C. D., for the production of the said in part recited indenture of lease, and for the delivery of copies thereof to him and them; then and in that case the covenants and agreements herein contained for that purpose shall from thenceforth cease and be void, and these presents shall, at the request in writing of the said A. B., his executors or administrators, be delivered up to him or them to be cancelled, anything herein contained to the contrary thereof in anywise notwithstanding. In witness, &c.

OBSERVATIONS AND CASES.

covenant.

implied.

A covenant is the agreement or consent of two or more by deed in writing, sealed and delivered, whereby either or one of the parties doth promise to the other that something is done already, or shall be done afterwards; and he that makes the covenant is called the covenantor, and he to whom it is made, the covenantee.(k) And this covenant is Express and either express or implied. Express, where the covenant is expressed in the deed. Implied, where the deed doth not express it, but where the law makes and supplies it. But there is this distinction between an express covenant, and a covenant created or implied by law; for, where the covenant is created or implied by law, the covenantee cannot bring an action of covenant if he be not ousted by one who has a title; but it is otherwise in case of an express covenant. (l)

Real or

A covenant is also either real or personal. Real,

Implied covenants.

(k) Shep. Touch. 160. 2 Brownl. 161.
(l) As where a lease contained a recital of an agreement made by the lesses with the lessor for pulling down an old mill and building another of larger dimensions upon a place near the premises, and also a covenant to keep such new mill in repair, and so leave it at the expiration of the term, but it did not contain a covenant to build it; held that such a covenant was implied.—Sampson v. Easterly, 4 M. & R. 422. 9 B. & C. 505. So where a lessee covenanted that he would at all times and seasons of burning of lime supply the lessor and his tenants with lime at a stipulated price for the improvement of their lands and repair of their houses; held that this was an implied covenant, also that he would burn lime at all such seasons, and that it was not a good defence to plead that there was no lime burned on the premises out of which the lessor could be supplied. -Barl of Shrewsbury v. Gould, 2 B. & A. 487. And where there was a proviso in a lease for twenty-one years, that if either of the parties should be desirous to determine it in seven or fourteen years, it should be lawful for either of them, his executors or administrators, so to do, upon twelve months' notice to the other of them, his heirs, executors, or administrators, extends by reasonable intendment to the devisee of the lessor, who is entitled to the rent and reversion.—Roe d. Bamford v. Hayley, 12 East, 464. And also where there was a covenant by lessee that he would at all times during the term plough, sow, manure, and cultivate, the demised premises (except the rabbit warren and sheep walk) in a due course of husbandry, the lessee, by ploughing the rabbit warren and sheep walk, subjected himself to an action of covenant, (implied that he would not do so,) which was held maintainable against him.—Duke of St. Albans v. Ellis, 16 East, 852.

where a man doth bind himself to pass a real thing; personal. as, lands or tenements. Personal, where a man doth covenant to do anything personal; as, to build

or repair a house, or serve another. (m)

Covenants are also said to be either inherent or Inherent or collateral. Inherent, such as covenants about the collateral. land, or knit to the estate in the land.(n) Collateral, such as are conversant about some collateral thing, or nor immediately concerning the thing granted.(0)

The most frequent use of a covenant is, to bind The use of a man, his heirs, executors, and administrators, to do something in future, and, therefore, is for the most part executory; and if the covenantor do not perform it, the covenantee, and all those claiming through him, or in his right, may have thereupon for his and their relief a compensation in damages by an action, or writ of covenant against the covenantor, his heirs, executors, or administrators, so often as there is any breach of the covenant; and if there be judgment for one breach, and after the covenantor doth break the covenant again, in this case, provided it is not a covenant in gross, he may bring a new action, and so for every breach.

A covenant in gross is, where an entire duty or Covenant in obligation is affirmatively created; as, when a man gross. covenants for the title of an estate; in which case, if the covenantor be ousted by a stranger under some superior title, the covenant is entirely broken, and entire damages can only be recovered by the

covenantee in respect of such breach. (p)

A covenant by \hat{A} . and \hat{B} . for themselves jointly, (q) Joint and

(m) Shep. Touch. 185. (n) Inherent, thus: so that the thing demised shall be quietly enjoyed; shall be kept in repair, &c.

⁽o) As to pay a sum of money in gross; to build a house on another san's ground; to make a lease of other land in case of ouster of posses-

sion, &c.

(p) Shep. Touch, 161, 162.

(q) Though a covenant be joint in its terms, yet, if the interests of the covenantors be several, each may sue separately for a breach.—Withers v. Birchman, 5 D. & R. 106. 3 B. & C. 254. And in covenant, where the interest of the covenantors is several, although the covenant be joint, yet it shall be taken to be several, and the action is maintainable by one alone.

See Yaman 2 Magnet 195. 5 Price, 529. A covenant with -See James v. Emery, 2 Moore, 195. 5 Price, 529. A covenant with

several cove- without more words, the covenant is joint, and one of them, while both are alive, cannot be charged without the other; and if one of them die, the survivor, or his heirs, are solely chargeable at law; but if they covenant for themselves severally the covenant is several, and they must be sued apart; and if they covenant jointly and severally, then the covenant is joint and several, and they may be sued either way, at the election of the covenantee.

Construction of covenants.

The construction of covenants is the same in equity as at law; but equity will relieve against a strict performance upon equitable circumstances, and no wilful default. (r) A. being possessed of a lease for years covenanted in an indenture for making a family provision, that if he should die during the continuance of the term of the lease, his executors or administrators should assign the residue to B.; A. afterwards purchased the reversion in fee and died;—held that A. did not by the terms of the covenant intend to preclude himself from purchasing the fee, and, therefore, his executors were not liable upon that covenant.(s) A lessee of tithes covenanted for certain considerations for himself, his executors and assigns, not to take tithes in kind from the tenants for twelve years, but to accept a reasonable composition, not exceeding three shillings and six pence per acre;—held that his underlessee of the tithes was not an assignee within the meaning of the covenant, nor bound by such a covenant of the lessee. (t) If a vendor

two, and every of them is joint, though the two are several parties to the deed.—Southcote v. Hoare, 3 Taunt. 87. In a lease of a colliery the two lessees covenanted "jointly and severally" with the lessor in manner following, viz., &c.; then followed several other covenants, after which was a covenant that moneys due should be accounted for, and paid by the lessees, their executors, &c., not saying and each of them; held that this and the former covenants were several as well as joint.—Duke of North-

umberland v. Errington, 5 T. R. 522.

(r) Eaton v. Lyon, 3 Ves. jun. 692. A covenant the same as the other parts of a deed is, by the general rules of exposition, to be taken most strongly against the covenantor, and most in advantage of the covenantor.

—Touch. 166.

⁽s) Williamson v. Butterfield, 2 B. & P. 63.
(t) Brewer v. Hill, 2 Anst. 413. Nor could the tenant of the lands take advantage of such a covenant entered into with his landlord to which he himself was no party.—Id.

retains the title deeds, and covenants for further assurance only, the purchaser may, under that covenant, compel him to enter into a covenant for pro-

duction of the deeds.(u)

The reasonableness of a covenant by a lessee, in Usual or a lease of lands renewable for ever, that he and his customary covenants. heirs shall always live upon the lands, or pay an additional rent, with the usual remedies by distress and entry, is properly triable at law, and a court of equity will not interpose, or give relief against it.(v) A party contracted for an assignment of the lease of a public house, which, in the agreement, was described as holden at a certain net annual rent, under usual and common covenants; and the lease contained a covenant by the tenant to pay land tax, sewers' rate, and all other taxes, and a proviso for re-entry if any business but that of a victualler should be carried on in the house; and it was proved that a considerable majority of public house leases contained such a proviso;—held that the covenant to pay the land tax, &c., was a common covenant in a lease, reserving a net rent; and that the proviso for re-entry must, with reference to a lease of a public house, also be considered usual and common.(w) Under a power to a tenant for life to lease for years, reserving the usual covenants, &c., a lease made by him containing a proviso that in case the premises were blown down or burned, the lessor should re-build, otherwise the rent should cease, is void; the jury finding that such covenant is unusual. (x)

A lease containing a covenant by the lessee to Qualified repair the premises at all times, (as often as need or covenants. occasion should require,) and, "at farthest, within three months after notice," is one entire covenant, the former part of which is qualified by the latter. (y)

⁽a) Fain v. Ayres, 2 Sim. & Stu. 533.
(v) Ponsonby v. Adams, 2 Bro. P. C. 431.
(w) Bennet v. Womack, 7 B. & C. 267. 1 M. & R. 644. 3 C. & P. 96.
A covenant not to assign without the leave of the landlord is a fair and usual covenant.—Morgan v. Slaughter, 1 Esp. 8.
(x) Doe d. Ellis v. Sandham, 1 T. R. 705.
(y) Horsfall v. Testar, 1 Moore, 89. 7 Taunt. 385.

Qualified covenants.

The lessor, after a demise of certain premises, with the portion of an adjoining yard, covenanted that the lessee should have "the use of the pump in the yard jointly with himself, whilst the same should remain there, paying half the expenses of the repairs." The words "whilst," &c., were considered as reserving to the lessor a power to remove the pump at his pleasure, and was no breach of the covenant, though he removed it without a reasonable cause, and in order to injure the lessee. out those words, it would have been a breach of covenant to have removed the pump. (z)lessee of a coal mine, who covenants to pay a certain share of all such sums of money as the coal should sell for at the pit's mouth, is not liable under that covenant to pay to the lessor any part of the money produced by sale of the coals elsewhere than at the pit's mouth.(a) Where a lease was made by plaintiff to J. T. for years of a messuage and farm at a yearly rent payable quarterly, and J. T. covenanted to pay the rent at the days and in manner therein mentioned, and also to pay interest in case the rent should be behind three quarters; and defendant covenanted that J. T. should at all times during the term well and truly pay to the plaintiff the said rent at the respective days, and also interest, and should duly observe all the covenants; and that in case the said J. T. should neglect to pay the rent for forty days, defendant should pay on demand;—held that the defendant was not chargeable until after forty days, and demand made, and plaintiff having declared generally assigning for breach rent in arrear, and it appearing upon oyer that the lease contained the qualification above stated, that the breach was ill assigned; and there being general damages upon the whole declaration, which contained other breaches which were well assigned, that judgment, nevertheless, was

⁽z) Rhodes v. Bullard, 7 East, 116. 3 Smith, 173.
(a) Clefton v. Walmesly, 5 T. R. 564. S. P. Gerrard v. Clifton, 7 T. R. 676. 1 B. & P. 524.

Lease to A. for a term of years at a Qualified arrested.(b)yearly rent, and under and subject to the payment at stipulated periods during the term of certain sums of money in the nature of fines, with a covenant on the part of the lessor at the end of the term, on due and punctual payment being made of the rent and gross sums or fines at the time appointed for payment thereof, to grant a further or renewed A. assigned to B. a part of the premises for the same term and interest as A. himself took under the lease, subject to a proportional part of the rent and gross sums or fines (the amount of the proportion was not specified); C. afterwards purchased of the lessor the reversion of the premises expectant on the lease to A., and subsequently to acquiring the reversion purchased A.'s interest in all the premises demised to A. by the lease, and not assigned by him to B. After this purchase by C., one of the gross sums or fines became due, but was not paid, and no proportion of it was demanded from, or was paid by, B.; -held that the double character filled by A. relieved B. from the strict performance of the covenant, and that the non-payment by B. of a proportion of the gross sum or fine was not, under the circumstances, a refusal to pay, or such a breach of the covenant as to deprive B. of his claim to a renewed lease of the property assigned to him, and a demurrer for want of equity, was overruled. (c) The assignor of a lease covenanted that he had not at any time done or suffered any act or thing whereby the premises intended to be assigned could be impeached or affected in title or estate, and that for and notwithstanding any such act, &c., the lease was a good, valid, and subsisting, lease, and not forfeited, surrendered, or become void; and that he had in himself good right, full power, and authority, to grant, assign, transfer, and set over, the same to the assignee, in manner aforesaid: then followed a covenant for further assurance by the

(b) Sicklemore v. Thissleton, 6 M. & S. 9.
(c) Statham v. Liverpool Dock Company, 3 Y. & I. 565.

Qualified covenants.

assignor, and all persons claiming under him;held that the general words that the assignor had full power to grant, assign, and set over, were restrained by the preceding part of the covenant, and, therefore, that such covenant was confined to the act of the assignor alone. (d) So where the assignor covenanted that for and notwithstanding any act or thing by him done, the lease was valid; and further, that it should be lawful for the assignee at all times during the term quietly to enjoy, without the lawful let or interruption of the assignor, his executors, administrators, or assigns, or any of them, or any other person or persons whomsoever, claiming any estate or right in the premises, and that clearly discharged by the assignor, his heirs, executors, administrators, or assigns, from all former incumbrances made or suffered by him, or by their, or any of their, acts or privity: and then followed a covenant for further assurance by the assignor, his executors and administrators, and all persons whomsoever claiming under him;—held that the general words in the covenant for quiet enjoyment were restrained by the restrictive words in the covenant for title and further assurance which preceded and followed it; and, therefore, that such covenant was confined to the acts of the covenantor, and those claiming under him.(c) The assignor in a deed of assignment of a lease, after reciting the original lease, granted to another for the term of two years, which, by mesne assignments, had vested in him, and that the plaintiff had contracted for the absolute purchase of the premises, bargained, sold, assigned, transferred, and set over, the same to the plaintiff, for and during all the rest and residue of the said term of ten years, in as ample manner as the assignor might have held the same, subject to the payment of rent and performance of the covenants; and then covenanted that it was a good and subsisting lease, valid in the law, in

⁽d) Foord v. Wilson, 2 Moore, 592. (e) Nind v. Marshall, 3 Moore, 703. 1 B. & B. 319.

and for the said premises thereby assigned, and not forfeited, &c., or otherwise determined, or become void or voidable;—held that the generality of this covenant for title, which was supported by the recital of the bargain for an absolute term of ten years, was not restrained by other covenants which went only to provide for or against the acts of the assignor himself, or of those who claimed under him; such as, first, a covenant against incumbrances, except an underlease of part by the assignor for three years; secondly, for quiet enjoyment; thirdly, for further assurance; and, therefore, when it appeared that the original lease was for ten years, determinable on a life in being which dropped before the ten years expired, though not till after the covenant of the assignor;—held that the assignee might assign breach upon the absolute covenant for title.(f)

Whether a party has broken any of his covenants Breach of or not is a matter properly triable at law, as the covenant. damages (supposing a breach) cannot be settled without such trial. (g) Where A. granted a lease to B. of certain tenements, and covenanted that if he, his heirs or assigns, should, during the said term, have any offer made for the disposal of certain land adjoining the demised premises, he or they should not dispose of the same without previously offering it to B., his executors, administrators, or assigns, at 5 per cent. less than such offer. fore the expiration of the lease, A. sold to C. upon one entire contract, and for one entire sum, the whole of his estate, comprising, amongst other property, the demised premises, and the ground which was the subject of the covenant, without making any offer of the latter to B.,—held that this was no breach of the covenant, either absolute or implied, on the part of A.(h) If a lease contain a covenant for quiet enjoyment against the lessor,

⁽f) Barton v. Fitzgerald, 15 East, 530.
(g) Stafford v. London, 4 Bro. P. C. 635.
(Å) Collison v. Lettsom, 2 Marsh, 1. 6 Taunt, 224.

and those who claim under him, the lessee cannot, upon an eviction by a paramount title, recover under the implied covenant for general title, im-

plied in the word "demise."(i)

Libbility of parties.

One who covenants for himself, his heirs, &c., and under his own hand and seal, for the act of another, shall be personally bound by his covenant, though he describe himself in the deed as covenanting for, and on the part and behalf of, such An action of covenant lies other person.(j)against the assignee of a lessee of an estate for a part of the rent, as in such case the action is brought on a real contract in respect of the land, and not on a personal contract; and in case of eviction, the rent may be apportioned as in debt in replevin.(k)

Covenants running with the land.,

A covenant in a lease that the lessee, his executors and administrators, shall constantly reside upon the demised premises during the demise, is binding on the assignee of the lessee, though he be not named.(l)A covenant to insure premises against fire which are situated within the weekly bills of mortality, as specified in the statute 14 G. III., c. 78, runs with the land.(m) A covenant in a lease by the lessor to supply two houses with good water at a rate therein mentioned for each house, runs with the land, for the breach of which the assignee of the lessee may maintain an action against the reversioner.(n) A covenant that the lessee, his executors or administrators, will not assign, does not bind the assignees. (o) If a lessee make over the whole of a term, although in the deed he reserves the rent, and a power of entry for non-payment to himself, and not to the original lessor; and although

⁽i) Merrell v. Frame, 4 Taunt, 329. But under the word demise, a lessee may maintain an action of covenant against the lessor for not having sufficient power to demise for the whole term, whereby the plaintiff was put to the expense of procuring a better title for the whole term.—Fraser v. Skey, 2 Chit. 646.

⁽f) Appleton v. Binks, 5 Rast, 148. 1 Smith, 361.
(k) Stevenson v. Lambard, 2 Rast, 575.
(l) Tatem v. Chaplin, 2 H. B. 133.
(m) Vernon v. Smith, 5 B. & A. 1.
(n) Jourdain v. Wilson, 4 B. & A. 266.
(o) Doe d. Cheere v. Smith, 5 Taunt. 795. 1 Marsh, 359.

he introduce new covenants, the person to whom it is made over may sue the original lessor, or his assignees, of the reversion, or be sued by them as assignee of the term, on the respective covenants in the original lease. (p) The assignee of a lease is not liable to the original lessor for a breach of a covenant not running with the land, unless he be expressly named in the lease as a covenantor.(q)A covenant by lessor to pay for all trees planted by

lessee does not run with the land. (r)

Where a covenant is part only of the consideration Dependent on one side, it is an independent covenant, and not or independent covenant, and not or independent covenant. a condition precedent.(s) In an agreement enuring nanta. as a lease, it was stipulated and conditioned "that the lessee shall not underlet;"—held that these words created a condition upon a breach of which the lessor might maintain ejectment, without an express clause of entry. (t) In a lease for seven years containing the usual covenants that the lessee should pay the rent, keep the premises in repair, &c., there was a proviso that the lessee might determine the term at the end of the first three or five years, giving six months' previous notice, and that then, and from, and after, the expiration of such notice, and payment of all rents and duties to be paid by the lessee, and performance of all his covenants until the end of the three or five years, the indenture should cease, and be utterly void;—held that the payment of the rent and performance of the other covenants were conditions precedent to the lessee's determining the term at the end of the first three years, and that his merely giving six months' notice, expiring with the first three years, was not sufficient for that purpose.(u) A covenant by a lessee to leave at the end of his term compost, &c., he having the yard, barn, and a room to lodge

⁽p) Palmer v. Edwards, 1 Doug. 187, (n.)
(q) Grey v. Cuthbertson, 2 Chit. 482. 1 Selw. N. P. 498. 4 Doug. 351.
(r) Id.
(s) Carpenter v. Creswell, 4 Bing. 409. 1 M. & P. 66.
(t) Doe d. Henniker v. Watt, 1 M. & R. 694. 8 B. & C. 308.
(u) Porter v. Shepherd, (in error,) 6 T. R. 665.

in, and dress and diet, is a mutual covenant, and not a conditional covenant.(v) Covenant to repair generally, and to repair within three months after notice in writing, are independent covenants. (w) Where a lessee covenanted to leave premises in repair at the expiration of the term, and also that the lessors might direct the lessee to complete the repair by giving six months' notice in writing;—held that these were two distinct and separate covenants, the former of which was not qualified by the latter.(x) A covenant to build a house for B., and finish it on or before a certain day, in consideration of a sum of money which B. covenants to pay A. by instalments as the building shall proceed. finishing the house is not a condition precedent to the payment of the money, but the covenants are A. therefore, may maintain independent. action of debt against B. for the whole sum, though the building be not finished at the time appointed. (y) Where anything is to be done by a plaintiff before his right of action accrues on the defendant's covenant, it should be averred in the declaration that the thing was done. (z)

Discharge of covenant.

If tenant for a term of years lease for a less term and assign his reversion, and the assignee take a conveyance of the fee by which his former reversionary interest is merged, the covenants incident to that reversion are thereby extinguished.(a)

There is a distinction between satisfaction and

performance of a covenant. (b)

All actions of covenant must be brought within ten years after the end of the session of 1833, or within twenty years after the cause of action accrued. (c)

⁽v) Dodd v. Innes, Loft. 56. (w) Doe d. Morecraft v. Meux, 7 D. & R. 98. 4 B. & C. 606. 1 C. & P.

⁽x) Wood v. Day, 1 Moore, 389. 7 Taunt. 646.
(y) Terry v. Duntze, 2 H. B. 389.
(z) Campbell v. Jones, 6 T. R. 571. But it is otherwise when the covenants are independent of each other.—Id.
(a) Webb v. Russell, 3 T. R. 393.
(b) Goldsmid v. Goldsmid, 1 Swans. 211.
(c) 3 and 4 Wil. IV., c. 42, s. 3.

DISTRESS FOR RENT.

THE power of distraining was originally given to Power of the lord (in lieu of the forfeiture of the land) for distress how the purpose of enforcing the tenant to perform given. those services which were the consideration of his enjoyment of the land. Hence the distress was considered merely as a pledge, and the detention thereof was justifiable only so long as the duties incident to the tenure remained undischarged. the tenant offered gages and pledges for the per-formance of the services, and the lord after such offer persisted in detaining the distress, the tenant might sue out a writ of replevin, the tenor of which was that the defendant had taken and unjustly detained the goods "against gages and pledges." This form is still preserved in the proceedings in replevin; but the offer of gages and pledges have fallen into disuse. There are several sorts of distresses, (that is to say,) at the common law, (d) by prescription,(e) and by the statute.

STATUTES RELATING TO DISTRESS FOR RENT, AR-RANGED UNDER THE HEADS TO WHICH THEY RESPECTIVELY BELONG.

Who may distrain.

By the 3 and 4 W. IV., c. 27, s. 2, no distress Time when for rent can be made but within twenty years next 3 and 4 W. after the right to make the distress accrued; and IV., c. 27.

(e) By prescription, a distress may be taken for an amerciament in a By prescripcourt baron.—1 Roll. Abr. 666, 1, 6. For a penalty imposed for a breach tion.

of a bye-law; for a toll in a fair.

⁽d) At common law a distress may be taken for the non-performance of Distress at services, either certain, or such as may be reduced to a certainty, viz.: common heriot service, rent service, &c.—I Roll. Abr. 665. 1, 47. Plowd. 96; and law. see Lit. sec. 213. And at common law goods or cattle, damage feasant, may be distrained.—I Inst. 142, a. 161, a.

section 42. by section 42 of the same act, no more than six

years' rent can be recovered by distress.

By executors, 32 H.

By 32 H. VIII., c. 37, executors and adminis-VIII., c. 37. trators, tenants in fee, fee tail, or for life, of rents, services, rent charges, rent secks, and fee farms, unto whom any such rent or fee farm is unpaid at the time of death, may distrain upon the lands chargeable for arrears, so long as they continue in the possession of the tenant who ought to have been paid.

Upon lands arrearages.

And by 3 and 4 W. IV., c. 42, s. 37, the execudemised for tors and administrators of any lessor or landlord may distrain upon the lands demised for any term or at will, for the arrearages of rent due to such lessor or landlord in his lifetime, in like manner as

he might have done in his lifetime.

Section 38. Arrearages may be distrained for after term ended, if diswithin six months afterwards.

And by section 38, such arrearages may be distrained for after the end or determination of such term or lease at will, in the same manner as if such term or lease had not been ended or determined; tress made provided such distress be made within six calendar months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears became due; and that all and every the powers and provisions in the several statutes made relating to distresses for rent, shall be applicable to distresses so made.

32 H. VIII., c. 37. wives.

By 32 H. VIII., c. 37, husbands seized in right of their wives may distrain after their death for ar-Husbands in rears incurred in their lifetime. By section 4 of the same act, a similar remedy is given to tenants pur autre vie, after the death of the cestui que vie.

For what Rent a Distress may be made.

By 4 G. II., c. 28, s. 5, the same power is given 4 G. II., c. by distress for the recovery of rent-seck, rents of For what rent a dis- assize, and chief rents, as in the case of rent retress may be served upon lease. made.

What Property may be distrained.

By 2 W. and M., sess. 1, c. 5, s. 3, distress may ² W. and M. be made of sheaves or cocks of corn, or corn loose sheaves,&c. or in the straw, or hay lying or being in any barn or granary, or upon any hovel, stack, or rick, or

otherwise upon any part of the land.

And by 11 G. II., c. 19, s. 8., distress may be 11 G. II., c. made of all sorts of corn and grass, hops, roots, 49, s. 8. fruit, pulse, or other product whatsoever, which &c. shall be growing on any part of the estates demised or holden; and the same may be cut, gathered, made, used, carried, and laid up, when ripe, in the barns or other proper place on the premises; and if there shall be no barn or proper place on the premises, then in any other barn or proper place which the landlord shall hire, or otherwise procure, for that purpose, and as near as may be to the premises, and in convenient time appraised, sold, or otherwise disposed of, towards satisfaction of the arrears and charges of the distress, appraisement, and sale, in the usual manner; the appraisement to be taken when cut, gathered, cured, and made, and not before; AND by section 9, tenants are to have notice of the place where the distress is lodged or deposited within the week, and the distress is to cease if the rent and charges be paid before the By 56 G. III., c. 50, s. 6., landcrops are ripe. lords are not to distrain for rent on purchasers of crops severed from the soil, or other things sold subject to husbandry agreements, nor on stock or implements employed under the provisions of the act.

Chattels prohibited from being distrained.

51 H. III., s. 4, prohibits distresses to be made 51 H. III., of beasts of the plough or sheep, unless there is no Chattels in other distress.(f)

⁽f) See 8 Anne, c. 14, for landlord's claim for a year's rent, when tenant's goods are taken in execution.

When to be made.

8 Anne, c. 14 Arrears due be made within six calendar months.

By 8 Anne, c. 14, s. 6 and 7, persons having any on leases de rent in arrear, or due upon any lease for life or termined to lives, or for years, or at will, ended or determined, may distrain for such arrears after the determination of the said respective leases, in the same manner as they might have done if such leases had not ended or determined, provided that such distresses be made within six calendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due.

How the Goods are to be disposed of.

Time and manner of sale.

By 2 W. and M., sess. 1, c. 5, s. 2, where any goods or chattels shall be distrained for any rent reserved and due upon any demise, lease, or contract, whatsoever, and the tenant or owner of the goods so distrained shall not within five days next after such distress taken, and notice thereof, (with the cause of such taking left at the chief mansion house, or other most notorious place on the premises, charged with the rent distrained for,) replevy the same, the person distraining may appraise and sell the same for the best price that can be gotten, towards satisfaction of the rent, and charges of such distress, appraisement, and sale, leaving the overplus (if any) in the hands of the sheriff, undersheriff, or constable, for the owner's use.

Impounding

By 11 G. II., c. 19, s. 10, persons making distresses for any kind of rent may impound, or otherwise secure, the distress, of whatever nature it may be, in such place, or in such part of the premises, chargeable with the rent as shall be most fit and convenient, and may appraise, sell, and dispose of, the same upon the premises.

Appraisement of the Goods, &c., distrained.

By 2 W. and M., sess. 1, c. 5, s. 2, the person 2 W. and M., distraining, with the sheriff or undersheriff of the sess. 1, c. 5. county, or with the constable of the hundred, or Appraiseparish, or place, where the distress is taken, (who disposal. are required to be aiding and assisting therein,) is to cause the goods distrained to be appraised by two sworn appraisers, (whom such sheriff, undersheriff, or constable, are to swear to appraise the same truly, according to the best of their understanding).

Fraudulent removal of Goods.

By 11 G. II., c. 19, s. 1, in case any tenant, 11 G. II., c. lessee for life or years, at will, sufferance, or other-Fraudulent wise, of any messuages, lands, tenements, or here-removal. ditaments, upon the demise or holding whereof any rents are reserved, due, or made payable, shall fraudulently or clandestinely convey away, or carry off or from such premises, his goods and chattels, to prevent the landlord or lessor from distraining the same for arrears of rent so reserved, due, or made payable, the lessor or landlord, or any person or persons by him for that purpose lawfully empowered, may, within the space of thirty days next ensuing such conveying away, or carrying off, such goods or chattels as aforesaid, take and seize such goods and chattels wheresoever the same shall be found, as a distress for the said arrears of rent, and the same sell, or otherwise dispose of, in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord, in and upon such premises, for such arrears of rent. And section 2. by section 2 it is provided, that the same shall not extend to empower the taking or seizure of goods or chattels as a distress, which shall be sold bond fide, and for a valuable consideration, before such seizure made to the persons not privy to such fraud, (and see 8th Anne, c. 14, ss. 2, 3, and 5). And by

Section 3.

section 3 it is enacted, that if a tenant or lessee shall fraudulently remove or convey away his goods or chattels, or if any person shall wilfully and knowingly aid or assist any such tenant or lessee in such fraudulent conveying away, or carrying off of any part thereof, or in concealing the same, such person so offending shall forfeit and pay to the landlord or lessor, from whose estate such goods and chattels were fraudulently carried off as afore-

to value of goods.

Section 5. Appeal. to persons assisting.

said, double the value of the goods by him carried off or concealed, to be recovered by action of debt. section 4, as And by section 4 it is provided, that where the value shall not exceed £50, the landlord or his bailiff, servant, or agent, in such behalf, may exhibit a complaint in writing against the offender, before two justices of the same county, riding, or division of such county, residing near the place whence such goods were removed, or near the place where the same were found, not being interested in the lands or tenements whence the goods were removed, who are to summon the parties, examine the fact, and all proper witnesses on oath, and in a summary way determine whether the party charged be guilty, and to inquire in like manner of the value of the goods removed; and upon full proof of the offence, by order under hand and seal, may adjudge the offender to pay double the value; and in case of refusal after notice, may, by warrant, levy the same by distress, and for want of distress, commit the offender to hard labour for six months, unless the money ordered be sooner paid. And by section 5, an appeal is given to the quarter sessions. Section 7, as And by section 7, where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant or lessee, his servant or agent, or any person aiding or assisting therein, shall be put, placed, or kept, in any house, barn, stable, outhouse, yard, close, or place, locked up, fastened, or otherwise secured, so as to prevent such goods from being taken and seized as a distress, the landlord or lessor, or his steward, bailiff, receiver, or

other person, empowered to distrain such goods, (first calling to his assistance the constable, headborough, borseholder, or other peace officer, of the hundred, borough, parish, district, or place, where the same shall be suspected to be concealed, who are to aid and assist therein; and in the case of a dwelling house, oath being first made before some justice of a reasonable ground to suspect that such goods are therein,) in the day time, may break open and enter such house, barn, stable, outhouse, yard, close, and place, and take and seize such goods for the said arrears of rent as he might have done if such goods had been put in any open field or place.

Limited Costs when Distress shall not exceed

By 57 G. III., c. 93, no person whomsoever costs of dismaking, or employed in making, or doing any act the arrears whatsoever, in the course of any distress for rent, are under where the sum due shall not exceed £20, shall take or receive, out of the produce of the goods distrained, or from the tenant distrained on, or from the landlord, or from any other person whatsoever, any more costs and charges for and in respect of such distress, or any matter or thing done therein, than such as are fixed by the following schedule; and no person whatsoever shall make any charge whatsoever for any act, matter, or thing, mentioned in the schedule, unless it shall have been really done.(g)

(9) By 7 and 8 G. IV., c. 17, all the rules, regulations, clauses, provisions, penalties, matters, and things, in the above act contained, are extended so far as the same are applicable, and capable of being put in execution, with respect to distresses for land tax, assessed taxes, poor's rates, church rates, tithes, highway rates, sewers' rates, or any other rates, taxes, impositions, or assessments, whatsoever, in all cases where the sum demanded or due for or in respect of such taxes, rates, tithes, assessments, or impositions, shall not exceed £20 in the whole.

SCHEDULE.

Allowance under the act when the distress shall not exceed £20.

Levying distress	••	••	••	••	••	£.	s. 3	d. 0
Man in possession per day	• •	• •	• •	• •	• •	U	3	0
Appraisement whether by o in the pound on the value	e of ti	he good	l s	• •	• •			
Stamp, the lawful amount t	there	of		• •	• •			
All expenses of advertiseme	nts,	if any s	uch	• •	• •	0	10	0
Catalogues, sale, and commission, and delivery of goods, one shilling in the pound on the net produce of the								
sale	• •	• •	• •	• •	• •			

Section 2 and 4.

By the 2nd and 4th sections, a party aggrieved by any such practice may apply to a justice of the peace, who may adjudge treble the amount of money unlawfully taken to be paid with costs, which may be levied by distress; and if complaint unfounded, may give costs to the party complained against: no judgment is to be given against any landlord unless he personally levies the distress.

Section 6.

And by section 6, brokers or persons who shall make or levy any distress must give copies of their charges, and of all the costs, signed by them, to the persons whose goods are distrained, although the amount of rent demanded shall exceed £20.

Wrongful or Excessive Distress (Remedy for).

Distraining where no rent is due.

Irregularity of distress. 11 G. II., a. 19, a. 19.

By 2 W. and M., sess. 1, c. 5, s. 5, double the value of the goods distrained, and full costs are 2 W. and M. given, where a distress is taken when no arrear of sess. 1, c. 5, rent is due.

And by 11 G. II., c. 19, s. 19, where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party distraining, or his agent, the distress shall not, therefore, be deemed unlawful, nor the party making it be deemed a trespasser, ab initio; but the party aggrieved by such unlawful act or irregularity shall recover full satisfaction for the special damage he shall have sustained, and no more in an action of trespass, or on the case with

full costs. But section 20 provides, that tender of amends may be made. (h)

By I and 2 Phil. and Mary, c. 12, no distress is Pound. to be driven out of the hundred, rape, wapentake, or lathe, except to a pound overt within the same · shire not above three miles distant from the place where the distress is taken; nor is any distress to be impounded at several places.

By 2 W. and M., sess. 1, c. 5, s. 4, treble Pound

damages are given in an action on the case for breach.

rescous or pound breach.

By 5 and 6 W. IV., c. 59, s. 4, persons im-Supply of pounding cattle or animals in any common pound, food to aniopen pound, or close pound, or in any inclosed pounded. place, are to supply them with sufficient daily food and nourishment, the value of which they may recover from the owner. And by section 5, any person may enter a pound to supply such food and nourishment, without being liable to any action or proceeding of any kind by reason of such entry.

On Distress for Rent in Arrear.(i)

The rent distrained for must be in arrear, and the distress must not be made on the same day the rent

(h) But if the first entry be illegal and unjustifiable, as if no rent whatever be due, or if the party distraining break open the outer door or the

like, none of his proceedings would be protected by this act.

(i) A distress for rent cannot be made in the night; that is, from after When to be sunset till sunrisc, because the tenant would not have any notice to made. make a tender of his rent, which possibly he might do in order to prevent the distress.—Gilb. on Dist. 56. It cannot be made on the same day on which the rent becomes due; for, if the rent be paid at any time during that day, whilst a man can see to count it, the payment is good; although strictly, indeed, the rent is demandable and payable before sunset on the day whereou it is reserved, yet it is not due till the last minute of the natural day.—Buckle v. Taylor, 2 Term Rep. 600. Tracey v. Talbot, 6 Mod. 214.

Where there are separate demises there ought to be separate distresses Where there on the several premises subject to the distinct rents, for no distress on one are separate part can be good for both rents.—Rogers v. Birkmin, 2 Stra. 1042. Where demises. one entire rent, a distress may be lawfully taken in either county for the whole rent in arrear. Chasing a distress over is a continuance of the taking, if the counties adjoin.—Walter v. Rumball, 1 Ld. Raym. 55. S. C. 12 Mod. 76. lands, however, lying in different counties are held under one demise at

The distress should be made for the whole of the rent that is due at one Should be time, and not vexatiously make several distresses for different portions of made for the the same rent.—See Legg v. Strudwick, 2 Salk. 214. Birch v. Wright, 1 whole rent. Term Rep. 380.

becomes due; for if the rent be paid during any part of the day, whilst a man can see to count money, the payment is good. A tender of the rent by the tenant to the landlord before distress taken. makes the taking unlawful; and even if he has distrained, and the tenant before the impounding tender the arrearage, the landlord ought to deliver the distress.

Distress for rent.

It is now laid down as a universal principle, that any kind of a distress may be taken for any kind of rent in arrear, the detention whereof beyond the day of payment is an injury to him that is entitled to re-

ceive it.(j)

Before the statute 17, c. 2, s. 7, in case a distress was too little, where a sufficient distress was to be had, a man could not distrain again, be the demand ever so great, for it was folly that at first he distrained no more. (k) But now by section 4 of such statute, in all cases where the value of the cattle detained shall not be found to be the full value of the arrears distrained for, the party to whom such arrears were due, his executors or administrators, may distrain again for the residue of the said arrears.

Property

It may be laid down as a general rule, that all liable to dis- chattels personal are liable to be distrained, unless particularly protected or exempted. (1)

What goods are privi-leged from distress.

The tools, utensils, or instruments, of a man's trade or profession; as, the axe of the carpenter, or the book of the scholar, a stocking frame, or a

Animals feræ naturæ

(j) 3 Black. Com. 6.
(k) Mo. 7, Bradby. 130.
(l) 3 Black. Com. 7. Dogs, (according to old authorities,) bucks, does, conies, and the like, that are feræ naturæ, cannot be distrained.—1 Inst.
47. But deer in an inclosed ground may be distrained for rent.—Will. 46. The exemptions appear to be, property in personal use; as, a horse on which the tenant may be riding, or an axe with which he is cutting wood.

—Co. Litt. 47, a. A horse in a smith's shop to be shoed, or in a common inn, nor cloth in a tailor's house, or corn sent to a mill or market, are not liable to distress, being privileged and protected for the benefit of trade.

—3 Black. Com. 8. But although goods of a guest at a public inn are privileged from distress by reason that all men have a right to use it without molestation; yet this exemption was not held to extend to the case of a chariot standing in the coach-house of a livery stable keeper.—I Black. Rep. 483. But this exemption does not apply to a person dwelling therein, as a tenant rather than a guest.—Bradby, 208, 209.

loom, implements of husbandry, beasts of the plough, and sheep, are also privileged from distress, not only while in actual use, but whilst any other sufficient distress can be found on the premises.(m)

Furnaces, cauldrons, or other things, fixed to Furnaces, the freehold, or the doors or windows of a house,

or the like, cannot be distrained.(n)

Goods in the custody of the law are not distrain- Goods in the able; therefore, goods distrained for damage feasant the law. cannot be taken for rent, nor goods in a bailiff's hands(o) on an execution, nor goods seized by process at the suit of the king, because they are in the custody of the law.(p)

At common law, such things only can be dis-Goods distrained as may be restored to the owner in the same common law plight as they were in at the time of taking them; and for this reason, sheaves and shocks of corn were not distrainable under the statute 2 W. and

M., sess. 1, c. 5, s. 3. (See p. 319.)(q)

Generally, whatever goods and chattels the land- Goods found lord finds upon the premises, whether they, in fact, on the prebelong to the tenant or a stranger, are distrainable by him for rent; for otherwise a door would be opened to infinite frauds upon the landlord, and the stranger hath his remedy over by action on the

(m) Co. Lit. 47. 4 T. R. 565. 1 Selw. N. P. 643. But this rule holds

(m) Co. Lit. 47. 4 T. R. 565. I Selw. N. P. 643. But this rule holds only in distresses for rent, amerciaments, and the like, but doth not extend to cases where a distress is given in the nature of an execution by any particular statute; as, for poor rates and the like —3 Salk. 136.

(n) Co. Lit. 47, b. Whatever is part of the freehold is exempted from distress; for that which is part of the freehold cannot be severed from it without detriment to the thing itself in the removal: that which is affixed to the freehold is part of the thing demised; those things, therefore, which savour of the realty are not distrainable.—Id.

(a) When a bailiff by virtue of a shariff's warrant on an execution

(p) Co. Lit. 47. Park, 120.

⁽o) When a bailiff, by virtue of a sheriff's warrant, on an execution issuing out of any of the courts of law, has taken possession of the goods, the landlord can claim but for one year's rent, and must give due notice to such sheriff of his claim, (see 8 Anne, c. 14,) who thereby becomes responsible for such rent, to be paid out of the proceeds of the sale in the first instance.—See "Notices."

⁽q) By the statute 56 G. III., c. 50, no sheriff or other officer shall sell or carry off from any lands any straw, chaff, or turnips, in any case, nor any hay or other produce, contrary to the covenant or agreement entered into for the benefit of the landlord of the farm; and section 2 provides that the tenant shall give notice to the sheriff of the existence of covenants, and the sheriff to the landlord; and section 3 empowers such sheriff or other officer to dispose of the produce, subject to an agreement to expend it on the land.

Cattle escaped.

case against the tenant, if by the tenant's fault the goods are distrained, so that he cannot render them when called upon.(r)Cattle escaped on the premises may be distrained, but not if the fences are out of repair through the neglect of the tenant of the land distrained for, or notice has been given to the owner, and he suffers them to remain afterwards.(s) But where they escape accidentally they are not distrainable until they have been levant and couchant; but if they escape by default of their owner, they are distrainable the first minute.(t)

Damage feasant.

Distress damage feasant is the strictest distress that is, and the thing distrained must be taken in the very act; for, if the goods are once off, though on fresh pursuit, the owner of the ground cannot take them.(u)

PRACTICAL DIRECTIONS FOR MAKING A DISTRESS.

A distress for rent is made by entering upon How a distress is the premises, and seizing any piece of furniture or made. chattels distrainable; saying, at the same time, that you seize that in the name of all the chattels (v) upon the premises, to the value of the rent distrained for, and stating the cause of the distress

(s) Lutw. 364. (t) 1 Ld. Raym. 169. (u) 12 Mod. 661. D Damage feasant means the doing damage, or trespassing upon land.

(v) A seizure of part in the name of the whole being as good as seizure of the whole, Dodd v. Morgan, 6 Mod. 215. Some pieces of furniture, or other personal chattel found on the premises, is to be taken hold of; and if the landlord makes the distress himself he is to say, "I distrain this chair (or whatever else it may be) in the name of all the goods and effects on these premises, as a distress for the sum of, &c., rent due to me at, &c., last." last."



⁽r) 3 Black. Com. 8. But in particular circumstances a court of equity will relieve.—See Fowkes v. Joyce, 3 Lev. 260. Where the landlord consented to sheep being put in the ground of his tenant for the night, and afterwards distrained them, the owner was relieved in equity on the ground of fraud in the landlord.—2 Vern. 131. But it is now the general opinion that it would be held by a court of law that cattle belonging to a drover, being put into a ground with the consent of the occupier to graze only one night in their way to a fair or market, were not liable to the distress of the landlord for rent.—2 Saund. 290, n. 7.

particularly; and if the distress be made by virtue of any particular authority,(w) it should be mentioned. A landlord, however, may distrain, not only upon the premises demised, but also the cattle or stock of his tenant depasturing on any common appendant or appurtenant, or any ways belonging to the same. (x) The distress must not be made on a highway. It must be made either by the land- By landlord or other perlord in person, or by some person deputed by him son authorby warrant. After seizure an inventory should be ised. taken of the distrainable goods upon the premises; copy it, and write at the foot of the copy (or annex) a notice, stating the cause of the distress, and that Notice of unless the rent be paid within five days, the goods shall be appraised and sold; and leave this copy at the chief mansion house, or other most notorious place on the premises, (y) or serve it personally on the tenant. If you remove the goods, state in your notice the place to which you have removed them.

The distress must be made in the day time. It Must be may be made at any time during the term for which day time. the premises are demised, or within six months after the determination thereof, provided the landlord's title and the tenant's possession continue at the time of the distress.(z) The landlord cannot break open the outer door of a house to make a distress, nor can he break open or throw down gates or inclosures for that purpose. But if he have entered the house, he may, if necessary, break open an inner door, &c.

The landlord may either remove the goods im- Removal of mediately, or he may allow them to remain on the the goods. premises for five days, inclusive of the day of the seizure, and reasonable time afterwards, leaving a person there in the care and possession of them, to

⁽w) If made by a broker, thus, "I distrain, &c., as a distress for the sum of, &c., rent due to the landlord of these premises at, &c., last, by virtue of an authority from the said (landlord) to me given for that purpose."

⁽x) 11 G. II., c. 19, s. 8. (y) 2 W. & M., sess. 1, c. 5, s. 2. (z) 8 A., c. 14, secs. 6, 7; and see 8 & 4 W. IV., c. 42, secs. 37, 38.

Removal of goods.

prevent them from being clandestinely removed. He cannot, however, leave them on the premises an unreasonable time longer than the time above mentioned, otherwise he will render himself liable to an action of trespass, unless he have the tenant's consent to do so; and tenants usually request this as an indulgence, in order that they may be enabled in the mean time to raise money for the payment of the rent, or have an opportunity to replevy the distress. Get the tenant to give you a written memorandum of his consent to your continuing in possession. However, sheaves of corn, &c., when distrained, may be impounded on the premises, until appraised and sold.(a) When corn, grass, &c., growing, is distrained, it may be laid up in barns and other proper places on the premises, and shall not be appraised or sold until it shall have been cut, gathered, cured, and made.(b) before that time, the sale is void, and the property in the corn is not thereby devested out of the tenant, or passed to the vendee. Any goods, when distrained, may be impounded on the premises, and may there be appraised and sold, in like manner as the distrainer might have done if carried off the premises.(c)

Household goods.

If you remove the goods distrained, if they be household goods or other dead chattels, you may place them in a pound covert; that is in some covercd place of safety, where they may not be exposed to injury from the weather. But where cattle are distrained, they may be placed either in a pound overt or pound covert, at the option of the distrainer: if he place them in a pound covert, as in a stable or the like, he must feed and sustain them; but if in a pound overt, common or special, the owner must attend at his peril; and for that purpose, if the distress be impounded in a special pound overt, notice thereof must be given to the

⁽a) 2 W. & M., sess. 1, c. 5, s. 3. (b) 11 G. 2, c. 19, s. 8. (c) 11 G. 2, c. 19, s. 10.

owner. (d) A distress shall not be driven out of the county where it is taken; (e) and a distress of cattle shall not be driven out of the hundred, rape, wapentake, or lathe, where it is taken, unless to pound overt within the same shire, and not above three miles' distance from the place where such dis-

tress was taken.(f)

If the owner of the goods distrained shall not Appraisewithin five days next after such distress taken, and sale. notice thereof left at the chief mansion-house, or other most notorious place on the premises, replevy the same; in such case the person distrained shall, with the sheriff or under-sheriff of the county, or with the constable of the hundred, parish or place where such distress shall be taken, cause the goods, &c., so distrained, to be appraised by two sworn appraisers, whom such sheriff, under-sheriff, or constable, shall swear to appraise the same truly according to the best of their understanding; and after such appraisement, shall sell the same for the best price that can be gotten for them, for satisfaction of the rent and charges of distress, appraisement, and sale, leaving the overplus (if any) with the sheriff, under-sheriff, or constable, for the owner's use. Previous to this statute, a distress, even for rent, could not be sold.

Upon the sixth day, inclusive of that on which the distress was made, and after the lapse of five times twenty-four hours from the time of the original seizure, or within a reasonable time afterwards, search at the sheriff's office if the goods have been replevied; if not, send for a constable of the hundred, parish, or place, where the distress was made, and also two sworn appraisers; the constable will then administer the usual oath to the appraisers, and indorse a memorandum of it upon the inventory. The appraisers, being sworn, proceed to appraise the goods; and having done so, write their

⁽d) 52 Hen. IV., c. 4. (e) 1 & 2 P. & M. c. 12, s. 1. (f) 2 W. & M. sess. 1, c. 5, s. 2.

appraisement also upon the inventory. The constable must be present during the appraisement. The appraisement should, it seems, be stamped.(g) The goods are usually sold to the distrainer, or a third person, for the sum at which they were appraised; and a receipt for the sum paid for them entered on the inventory, and witnessed by the constable. The distrainer must sell for the best price that can be obtained for the goods, (h) and an action lies if he does not.(i) The price at which the goods were appraised will be presumed to be the best till the contrary is proved. It appears that there is no order required by law to be observed in the sale of the goods. If there be a surplus after payment of the rent and charges, it should be given to the constable to keep for the owner. (j) If goods to the amount of the rent and charges have not been distrained, or if the distress die in the pound, or be otherwise destroyed by the act of God, the landlord may distrain again. The costs of the distraining, &c., where the rent in arrear does not exceed £20, are limited. (k)

FORMS IN TAKING A DISTRESS FOR RENT.

(1.)

Landlord's Authority to Broker.

To Mr. E. F., my bailiff.

I HEREBY authorise and require you to distrain the goods and chattles in the dwelling-house (or, in and upon the farm, lands, and premises) of A.B.,

(g) 55 G. III., c. 184. An inventory is first made similar to the one preceding, or annexed to the notice, or an appraisement stamp, and appraisement written under.

(h) Sometimes the appraisers buy the goods at their own valuation, and Bill of sale. a receipt at the bottom of the inventory, witnessed by the constable, is usually held a sufficient discharge. But it is advisable in most cases to have a proper bill of sale between the landlord, the constable, the appraisers, and the purchaser, for the better proving of the transaction afterwards, if there should be occasion. See Bill of Sale p. 229.

(i) 2 W. & M. sess. 1, c. 5, s. 2.

(i) Id.
(k) 57 G. III., c. 93, see p. 323. As to irregularity of distress, see statute 11 G. II., c. 19, s. 19, where the same is not deemed unlawful. See p. 324.

situate at, &c., in the county of, &c.,(l) for the sum of, &c., being — years' rent due to me for the same at — last, and to proceed thereon for the recovery of the said rent as the law directs. Dated the — day of &c. Yours, &c., Witness, E. C. C. D.

(2.)

The Inventory of Goods and Chattels distrained.

An inventory of the several goods and chattels distrained by me, C. D., (or E. F. the Bailiff,) the —— day of ——, in the year of our Lord 18——, in the dwelling-house, &c.,) (describing the premises,) of A.B., situate at, &c., in the county of, &c., (and if the distress be made by a bailiff, say, "by the authority and on the behalf of C. D.,") for the sum of £——, being —— years' rent due to me(m) (or, "to the said C. D.") at —— last.

In the dwelling-house schedule the goods.

(3.)

Notice of taking the Distress to be underwritten or annexed.

Mr. A. B.

Take notice, that I have this day distrained (or, "that as bailiff to C. D., your landlord, I have this day distrained") on the premises above-mentioned, the several goods and chattels specified in the above inventory, (or, if you annex the inventory, say, in the annexed(n) inventory,) for the sum of £—being—years' rent due to me ("or to the said C. D.") at—last, for the said premises;(o) and

(m) Here may be added, "For the said house and premises, and as yet in arrear and unpaid."

⁽¹⁾ Or say, "In the house he now dwells in," (as the case may be). Or say, the goods, chattels, and effects which may be found in or upon the premises in the tenure or occupation of, &c., situate, &c., for \mathcal{L} —due and owing to me for rent at, &c., and proceed therein as the law directs, for which this shall be your sufficient warrant and indemnity. Dated, &c.

⁽n) Annexing the inventory is the more convenient way, or the body of the notice may state it as, "The goods and chattels hereinafter mentioned."

(o) If secured on the premises say, "And have secured the said goods and chattels in the warehouse on the said premises." See Doug. 279.

that unless you pay the said rent, with the charges of distraining for the same, within five days from the date hereof, the said goods and chattels will be appraised and sold according to law. Given under my hand the —— day of ——, in the year of our Lord 18 .(p)

C. D.

Witness,

(4.)

Distress on growing Crops.(q)

To Mr. A. B.

Take notice that I have this day taken and distrained(r) on the lands and premises above mentioned, the several growing grops specified in the above inventory, for the sum of £——, &c,, (as in last,) for the said lands and premises; and that unless you previously pay the said rent, with the charges of distraining for the same, I shall proceed to cut, gather, take, cure, carry, and lay up, the said crops when ripe, in the harn, or other proper place on the premises, and in convenient time to appraise, sell, and dispose of, the same towards satisfaction of the said rent, and of the charges of such distress, appraisement, and sale, according to the form of the statute, in such case made and provided. Dated, &c.(s)

Another short form.

....

(p) To Mr. A. B.

Take notice, that I have this day seized upon your goods, in your house, in, &c., for 2——, being half a year's rent due to me at ——— last, and have taken an inventory thereof, (a copy of which is hereunto annexed,) and locked the same up in your chamber, one pair of stairs; and if you do not pay the rent due, or replevy the goods mentioned in the said inventory, I shall at the expiration of five clear days from the date hereof, make sale thereof, as the law directs. Dated, &c.

Yours, &c., C. D.

(q) See 11 G. II., c. 19, s. 8.

(r) Or, that as bailiff to A.B. your landlord.

(s) A memorandum of the delivery of a true copy to the tenant should be written under the notice, thus: "A true copy of the above inventory, and notice was this —— day of, &c., delivered to the above-mentioned A.B., in the presence of us."

(5.)

Distress for an Annuity or rent Charge.

Take notice, that by the order and on behalf of C. D., I have this day taken and distrained in and upon the farm and lands called, &c., in your occupation, in the parish of, &c., in the county of, &c., all the corn, grain, and effects, in the inventory hereunder written mentioned, for the sum of, &c., being - years' annuity or rent charge of, &c., per annum, due to the said C. D., at —— last, and charged on, and issuing and payable out of, certain manors, farms, lands, and premises, called, &c., in the parish of, &c., in the county of, &c., aforesaid, of which the farm and lands first above mentioned are part and parcel. And that unless the said arrears of the said annuity or rent charge, together with the expenses of this distress, are paid and satisfied, the said corn, grain, and effects, will be disposed of according to law. Dated, &c.

To Mr. A. B., and to all whom it may concern.

E. F.

(6.)

Memorandum of Appraisement to be written on the Inventory, and signed by Constable.(t)

Memorandum, that on the —— day of, &c., G. H., of, &c., and I. K., of, &c., two sworn appraisers,

(t) This memorandum may be indorsed on the inventory annexed or subjoined to the notice; but the inventory will in such case require an appraisement stamp; the inventory delivered to the tenant accompanying the notice will not require a stamp, but the one only which contains the appraisement. If written under the inventory it may be done shortly, thus, "The above goods and chattels were appraised by us, this — day of, &c., as the full value thereof."

The appraisement stamps are as follows:

				z.	8.	a.
Amount appraised not exceeding			£50	0	2	6
Exceeding	£ 50 and no	t exceeding	£100	0	5	0
	@7.00		£200	0	10	0
••••	0000	•••	£500	0	15	0
• • • •	£500			1	0	0

A separate inventory should in fact be made for the valuation, independent of the schedule or particulars annexed to the notices, and may

were sworn upon the holy Evangelists by me, L. M., of, &c., constable, well and truly to appraise the goods and chattels mentioned in this inventory, according to the best of their judgment. As witness my hand,

L. M., Constable.(u) Witnesses present at the time of swearing \(\) N. O., the said G. H. and I. K., as above, \ \ P. Q.,

(7.)Appraisement by Valuers.

We, the above named G. H. and I. K., being sworn upon the holy Evangelists by L. M., the constable above named, well and truly to appraise the goods and chattels mentioned in this inventory, according to the best of our judgment; and having viewed the said goods and chattels, do appraise and value the same at the sum of ——,&c. As witness our hands the —— day of, &c.,

G. H., Sworn appraisers.

run in this form:—"An inventory and appraisement of the goods seized and distrained by C. D., in the house of A. E., of, &c., for the sum of £—, being — years' rent due to the said C. D., at, &c., last; taken and appraised the — day of, &c. Then particularise the goods distrained, and write under, valued in all at the sum of, &c., by us, E.F. G. H., sworn appraisers." Or it may be in this concise form, "Inventory of furniture and effects belonging to Mr. C. D., of, &c., taken under a distress for rent for the sum of &c. arrears of rent due to A. R. a distress for rent, for the sum of, &c., arrears of rent due to A. B., at, &c., last, levied the --- day of, &c.

The effects specified therein, are appraised and valued at the sum of,

E. F., of, &c., Sworn G. H., of &c. Appraisers.

Sworn before me this —— day of, &c.,

G. H., of —— street, Constable."

The words of the oath to be administered to the appraisers are, "You, and each of you, shall well and truly, according to the best of your understanding, appraise the goods and chattels mentioned in this inventory,

(the constable showing the inventory.) So help you God."

(u) As to what constable must be applied to, see p. 321. It should be observed, that the distraining broker cannot act as one of the appraisers, or value the goods; for the tenant, in such case, (if the goods be sold,) may recover in an action for damages.

(8.)

Tenant's Consent for Bailiff's continuing in Possession beyond the limited Time.

Memorandum, that I, A. B., do hereby consent and agree, that C. D., my landlord, who hath distrained my goods and chattels for rent, in a dwelling-house, &c., (describing the premises,) situate at —, in the county of —, shall continue in possession of my said goods and chattels, in the said dwelling-house, &c., for the space of —— days from the date hereof; the said C. D. having agreed to forbear the sale of the said goods and chattels for the said space of time, to enable me to discharge the said rent. And I, the said A. B., do hereby agree to pay the expenses of keeping the said possession. As witness my hand, this —— day of ——

Replevying the Distress.

To prevent men's beasts, cattle, or other goods, being unjustly or excessively distrained, and if Provision they be so, that deliverance be speedily made of made as for repleying. them by replevy, (or taking back the pledge,) it is enacted, by the 52 Hen. III., c. 21, that the sheriff, immediately upon complaint to him made, shall 52 H. III preceed to replevy the goods; and for the greater ease of the parties, it is further provided by the stat. 1 & 2 P. & M., c. 12, s. 3, that the sheriff shall make at least four deputies in each county for the sole purpose of making replevins. Upon application therefore to the sheriff, or one of his said deputies, he will, pursuant to the statute 11 Geo. II., c. 19, take a bond, (u) with two sureties, in a sum 11 G. 11., double the value of the goods distrained, to be as- a. 19. certained on the oath of one witness not interested in the goods, and conditioned for prosecuting the suit with effect and without delay; and for duly

taking the goods distrained in case a return shall be awarded before any deliverance be made of the distress; and the sheriff will assign such bond to the avowant, or person making cognizance, on request made to the sheriff; and if forfeited, may be sued

in the name of the assignee.

store goods replevied.

The sheriff, on receiving such security, is immesheriff to re- diately, by his officers, to cause the chattels taken in distress to be restored into the possession of the party distrained upon and replevying, who is bound to bring his action of replevin, which may be prosecuted in the county court, be the distress of what But either party may remove it value it may.(v)to the superior courts; the plaintiff at pleasure, and the defendant upon reasonable cause. (w)usual, in the first instance, to one of the superior courts at Westminster Hall. (x) Upon this action Proceedings being brought, the distrainor, who is now the de-of distrainor fendant, makes avowry, that is, he avows taking the distress in his own right, or the right of his wife; (y) and sets forth the reason of it, as for rent arrear, damage done, or other cause: or else he justifies in another's right as his bailiff or servant, who is said to make cognizance; that is, he acknowledges the taking, but insists that such taking was legal, as he acted by the command of one who had a right to distrain; and in the truth and legal merits of this avowry or cognizance, the cause is determined. If it be determined for the plaintiff, that the distress was wrongfully taken, he has already got his goods back into his own possession, and shall keep them, and moreover recover damages. if the defendant prevails, and obtains judgment that the distress was legal, then he shall have a writ,(z) whereby the goods or chattels (which were distrained and then replevied) are returned

⁽v) 2 Inst. 139.

⁽v) F. N. B. 69, 70.
(x) See 2 Finch. L. 317, for if in the course of proceeding any right of freehold comes in question, the sheriff can proceed no farther.
(y) 2 Saund. 195.
(z) De retorno habendo.

again into his custody, to be sold or otherwise disposed of, as if no replevin had been made. (a) Or in case of rent inarrear, he may have a writ to inquire into the value of the distress by a jury, and shall recover the amount of it in damages if less than the arrear of rent; or, if more, then so much as shall be equal to such arrear; and if the distress be insufficient, he may take a further distress or distresses. (b) But otherwise if pending a replevin for a former distress, a man distrains again for the same rent or service, then the party is not driven to his action of replevin, but shall have a writ of recaption, and recover damages for the defendant's contempt of the process of law. (c)

(a) 17 Car. 2, c. 7. (b) Id.

(c) 3 Black, Com. 150.

OBSERVATIONS AND CASES.

Assignors cannot distrain.

A LESSEE for years who assigns cannot distrain And where the agreement (intended for rent.(d)as stipulations between lessee and undertenant) was held to constitute an absolute assignment of the lessee's interest in the premises, it was considered that he was not entitled to distrain for rent in arrear.(e) And so where a person having a term lets the same verbally for the whole of the term, it was held that he had not right to distrain. (f) a tenant from year to year, underletting from year to year, has a reversion which entitles him to distrain.(g)

Yearly tenant may.

Distress by joint tenants tenants in

A tenant holding under two tenants in common cannot pay the whole to one, after notice from the common, &c. other not to pay it; and if he do, the other tenant in common may distrain for his share. (h)several co-heirs in gavelkind may distrain for rent due to himself and his co-heirs, without any express authority from them.(i) One of several joint tenants may sign a warrant of distress, and appoint a bailiff to distrain for rent due to all, if the others do not forbid him; and if, when applied to, they merely decline to act, that will not prevent him Where one of several persons from proceeding.(j)who had together leased premises at one entire rent, to be divided and paid separately in equal portions, and one of them distrained upon the tenant for his own share of the rent, it was held that the distress was regular; for whatever might have been the interests of the landlords among themselves, (whose

⁽d) 2 Wils. 375.

⁽a) 2 wis. 575.
(c) Parmenter v. Webb, 2 Moore, 656.
(f) Preece v. Corrie, 5 Bing. 24. 2 M. & P. 57.
(g) Curtis v. Wheeler, M. & M. 493.
(k) Harrison v. Barnby, 5 T. R. 246; and see 1 B. & B. 11.
(i) Leigh v. Shepherd, 5 Moore, 297. 2 B. & B. 465.
(j) Robinson v. Hoffman, 1 M. & P. 474. 4 Bing. 562. 3 Carr. & P.

original interests did not appear upon the face of the demise,) as between them and the terre-tenant they were tenants in common, and entitled each to

a separate distress.(k)

A receiver appointed by the court of chancery Agents and has a right to distrain for rent, without any special receivers. authority from the court for that purpose. (1) authority to tenants to pay rent to a person whose receipt shall be their discharge, will not enable such person to distrain, although he receives the rent for his own benefit.(m)

A mortgagee, after giving notice to the tenant of Mortgagees the mortgage to him, although the lease be made under agreeprior to the mortgage, is entitled to rent in arrear ments for leases, &c. at the time of the notice, as well as to what accrues afterwards, and he may distrain for it after such notice.(n) A landlord who treats the occupier as a trespasser, by serving him with an ejectment, cannot afterwards distrain on him for rent.(o)

There must be an actual demise (oral or written) The necesat a specific rent to enable the landlord to dis-mise to distrain. (p) And where a landlord has assigned his train. interest in the premises, he has no power of distress remaining.(q) If, under an agreement for a lease at a certain rent, the tenant is let into possession before the lease is executed, the lessor cannot during the first year distrain for rent, for there is no demise, express or implied. (r)

A tenant holding over after notice to quit given Holding

(o) Although the ejectment is directed against the claim of a third person, who comes in and defends in lieu of the occupier, and the occupier is aware of that circumstance, and is never turned out of possession.

—Bridges v. Smith, 5 Bing. 410. 2 M. & P. 470.

(p) Dunk v. Hunter, 5 B. & A. 322. This means before any rent has

been paid; for, if rent be paid, it will constitute a yearly tenancy, and the

landlord may then distrain.

⁽k) Whitley v. Roberts, M'Clel. & Y. 107.

(l) Bennet v. Robins, 5 C. & P. 379. S. P. Brandon v. Brandon, 5 Madd. 473; and see Hughes v. Hughes, 3 Bro. C. C., 87.

(m) Ward v. Shew, 9 Bing. 638. 2 M. & Scott, 756.

(n) Moss v. Gallimore, 1 Doug. 279.

⁽q) Parmenter v. Webber, 2 Moore, 656 (r) Hegan v. Johnson, 2 Taunt. 148. But as soon as rent is paid under the agreement, then the occupier becomes tenant under an implied demise from year to year.—Hammerton v. Steed, 3 B. & C.478; and see Knight v. Bennett, 3 Bing. 361. 11 Moore, 227.

over after notice.

by the landlord is not liable to a distress, without some evidence of a renewal of the tenancy.(s) landlord has no right to distrain for double rent upon a weekly tenant who holds over after a notice to quit.(t) A landlord may distrain for rent for ready furnished lodgings.(u) Where rent was reserved, payable quarterly or half-quarterly, (if required,) the landlord having received the rent quarterly for a twelvemonth, he cannot legally distrain for half a quarter without notice.(v)

What goods liable to distress.

A threshing machine (not being a fixture) is liable to a distress for rent, unless in actual use at the time, or there being other sufficient distress upon the premises.(w) A threshing machine left on the premises of a tenant till the following Monday, the owner not having taken the same home with him in consequence of the distance, it was held that it might be distrained by the landlord for rent, if there was no other distress sufficient on the premises.(x)

Growing crops.

A tenant whose standing corn and growing crops have been seized as a distress for rent before they were ripe, cannot maintain an action on the case, under 2 W. and M., sess. 1, c. 5, for sealing the same, before five days had elapsed after the seizure, as such sale was altogether void. (y) A distress on growing crops of corn of a purchaser thereof from the sheriff, for rent accruing due to the landlord subsequently to the entry under the execution and sale, cannot be sustained, unless the vendee allow the crops to remain uncut an unreasonable time after they have become ripe. (z) Trees growing on a nurseryman's ground, who is a yearly tenant, and removable by such tenant from time to time, are not distrainable for rent under the 11

⁽s) Jenner v. Clegg, l M. & Rob. 213.
(t) Sullivan v. Bishop, 2 C. & P. 359.
(u) Newman v. Anderton, 2 N. & R. 224.
(v) Mallam v. Arden, 10 Bing. 299. 3 M. & Scott, 793.
(w) Fenton v. Logan, 3 M. & Scott, 82. 9 Bing. 676.
(x) Id.
(y) Owen v. Legh, 3 R. & A. 470

 ⁽y) Owen v. Legh, 3 B. & A. 470.
 (z) Peacock v. Purvis, 5 Moore, 79. 2 B. & B. 262.

G. II., c. 19, s. 8.(a) It seems standing crops can-Standing not be distrained upon under a clause in an annuity crops. deed, giving a power to enter and distrain for area's in like manner as for arrears of rent. (b) A te- When crops nant's growing crops taken in execution and sold, when in execution and sold, we will be a secution. and remaining on the premises a reasonable time for the purpose of being reaped, are not distrainable by the landlord for rent becoming due after the taking in execution.(c) All goods sent to a trades-Goods with man for the purpose of being wrought upon in the in the way of way of his trade are, during the time they remain his trade. in his custody, protected from distress.(d) An action is not maintainable for distraining beasts of the plough, when there is no other sufficient subject for distress on the premises but growing crops.(e) Wearing apparel may be distrained for rent. (f) So implements of trade may be distrained for rent, if they be not in actual use at the time, and if there be no other sufficient distress on the premises.(g) A stocking frame in actual use is not distrainable, Machinery unless there is not sufficient distress besides. (h) in use. Materials delivered by a manufacturer to a weaver, Materials to

(b) Miller v. Green, 2 Tyr. 1. 2 C. & I. 143. 8 Bing. 92. 1 M. &

carcase of a beast in the custody of a butcher, sent to him for the purpose of being slaughtered for the sender.—Id. So although the sender be also a butcher.—Id.

(e) Pigot v. Burtles, 1 Mees. & Wels. 441. And where a landlord distrains beasts of the plough, though there are other goods on the premises, he is not liable to an action for an illegal distress if he use due diligence to ascertain whether such goods are a sufficient distress without them; and he is not to be affected by a subsequent sale at a higher price than was expected.—Jenner v. Yolland, 2 Chitt. 167. 6 Price, 5.

(f) Bisset v. Coldwell, Peake 36. 1 Esp. 206, n. Smith, 1 Esp. 206. S. P. Baines v.

⁽a) Clarke v. Calvert, 3 Moore, 96. S. P. Clark v. Gaskarth, 2 Moore, 91. 8 Taunt. 431.

Scott, 199.
(c) Wright v. Dewes, 3 Nev. & M. 790. 1 Adol. & Ellis, 641. Such crops having been so taken, sold, and left, on the premises, and the arrears of rent paid pursuant to statute 8 Anne, c. 14, s. 1, the landlord cannot distrain them for rent subsequently due, on the ground that the purchaser has not entered into the agreement with the sheriff (to use and expend the produce in a proper manner) directed by statute 56 G. III., c. Nor is he entitled to presume, from the absence of such agreement, that the straw of such crops was sold for the purpose of being carried off the land contrary to section 1.—Id.

(d) Brown v. Shevil, 4 Nev. and M. 277. 2 Adol. & Ellis, 138. As the

⁽g) Gorton v. Falkner, 4 T. R. 565, S. P. Roberts v. Jackson, Peake Add. Cases.

⁽A) Watts v. Davies, 1 Selw. N. P. 676. Gorton v. Falkner, 4 T. R. 568.

be manufactured at his own home, are tured.

privileged from distress for rent.(i) Chattels

A landlord may distrain horses in a stable let by privileged or his tenant to an innkeeper during races.(j) Goods of a principal in the hand of a factor for sale, are privileged from distress for rent due from such factor to his landlord. (k) Goods deposited on the premises of an auctioneer for the purposes of sale, are privileged from being distrained for the rent of those premises. (1) A landlord distraining is prima facie liable for the act of his bailiff, in taking goods privileged from distress, though they never come to his hands. (m) If goods taken under an execution by the sheriff, and they remain upon the premises under a fictitious bill of sale, the landlord may distrain as before.(n) sheriff's officer took possession of goods of a tenant under an execution, and locked up the warrant in a table drawer there, and took the key away with him without leaving any person in possession, and after the fi. fa. was returnable the landlord distrained the goods for his rent, it was held that the sheriff could not maintain trespass against him.(o) A landlord's right to distrain revives upon an execution being waived.(p) A landlord may distrain upon the goods of his tenant, for a year's rent, notwithstanding an outlawry in a civil suit. (q)

When to be nıade.

A landlord who permits his tenant to retain pos-

⁽i) Wood v. Clark, 1 C. & I. 484. 1 Tyr. 315. 1 Price P. C. 26. But a frame or machinery delivered by the manufacturer to the weaver, together with the materials, is not privileged unless there be other goods upon the premises sufficient to satisfy the rent due.—Id.

(j) Crosier v. Tomkinson, 2 Ld. Ken. 439.

(k) Gilman v. Elton, 6 Moore, 243. 3 B. & B. 75.

(l) Adams v. Greene, 3 Tyr. 326. 1 C. & M. 380.

(m) Hurry v. Rickman, 1 M. & Rob. 126. But if, when he knows the circumstance he disclaims and repudietes the act he is not bound by it

circumstance, he disclaims and repudiates the act, he is not bound by it. -Id.

⁽n) Smith v. Russell, 3 Taunt. 400. (o) Blades v. Arundale, 1 M. & S. 711. (p) Seven v. Mihil, l Ld. Ken. 370.

⁽q) Saint John's College, Oxford, v. Murcott, 7 T. R. 259. In this case the sheriff's officer being in possession of the tenant's effects under an outlawry, made a distress for rent, sold the goods so distrained, and afterwards the outlawry was reversed;—ruled that the officer was liable to pay the produce of the goods to the landlord, in an action for money had and received .- Id.

session of part of a farm after the tenancy has 8 Anne. 0.14, expired, may distrain under 8 Anne, c. 14, ss. 6 & 7, see p. 320. on that part, within six months after the expiration left of the tenancy. (r) A landlord may distrain corn under a custom, that a tenant may leave his away going crop in a barn, &c., of the farm, for a certain time after the lease has expired, and he has quitted the premises, for rent in arrear, after six months having expired from the determination of the term.(8) landlord cannot justify making a distress for rent after dark.(t) The stat. 8 Anne, c. 14, s. 6, which enables a landlord to distrain after the determination of a tenancy, does not apply to cases where the tenancy is put an end to by the tenant's wrongful disclaimer. (u)

In a distress for rent, if the outer door be open, How to be the distrainer may justify breaking open an inner door or lock, in order to find any goods which are distrainable.(v) Tender of rent and expenses need not be made to the broker who distrains, if made to the landlord, as subsequent detainer is wrongful.(w) Where a broker's man quitted the house after having taken possession, and six days after the landlord broke into the house and took away the goods without any previous demand of admission; it was held that he had no right to enter again after so long a delay, and that the owner of the goods might maintain trover for them. (x)

The five days allowed before a distress can be 2 W. and M., sold, are inclusive of the day of sale. (y) When sess. 1, c. 5, goods are distrained, and at the end of five days . 2. removed and appraised, but not sold, such act does

How dis-

 ⁽r) Nuttal v. Staunton, 6 D. & R. 155.
 3 B. & C. 51.
 (s) Beavan v. Delaybay, 1 H. Bluck. 5.
 S. P. Lewis v. Harris, 1 H. B.

^{7,} n.

(f) Aldenburg v. Peaple, 6 C. & P. 212.

(w) Doe d. David v. Williams, 7 C. & P. 322.

(v) Brown v. Daun, Bull. N. P. 81.

(w) Smith v. Goodwin, 1 Nev. and M. 371. 4 B. and Adol. 413.

Russel v. Rider, 6 C. and P. 416. (x) Russel v. Rider, 6 C. and P. 416.

(y) Wallace v. King, 1 H. B. 13. The landlord must wait five whole days; that is, five times twenty-four hours before he sells, and if he does not, he is liable to an action. Thus, where a distress was made on Friday, at 2 p.m., and the sale was on the following Wednesday, at 11 a.m., the sale was held to be wrongful.—Harper v. Taswell, 6 C. and P. 166.

c. 19, s. 10.

And I G.II., not take away the tenant's right to replevy them. (z) A reasonable time after the expiration of five days from the time of distress, is allowed by law to the landlord for appraising and selling the goods distrained.(a) The request of a tenant will justify the landlord in detaining the goods of a lodger upon the premises beyond the proper time of selling, if he did not know which were the goods of the lodger, and which those of his tenant. (b) In the notice of distress for sale, under 2 W. & M., c. 5, it is not necessary to mention when the rent became due for which the distress was made. (c) The surplus money must be restored on demand, the statute being imperative.(d)

Appraise_ ment.

The person who distrains should not be sworn as one of the appraisers, (e) for a distress so appraised is irregular. (f) The appraiser must be sworn before the constable of the parish where the distress is taken. (g) The constable who swears the appraisers must attend with the appraisers at the time of the appraisement, and must swear them before they make it.(h) Where the distress is sold without previous appraisement, the party can only recover the value of the goods minus the amount of rent due; but he may recover special damage sustained by such an illegal sale.(i)

Suspension of right to distrain.

A landlord may distrain for rent after having taken a note of hand for the amount, for it is no alteration of the debt until payment. (j) So he may

(z) Jacob v. King, 1 Marsh, 135. 5 Taunt. 451.

(a) Pitt v. Shaw, 4 B. and A. 208. (b) Fisher v. Algar, 2 C. and P. 374. (c) Moss v. Gallimore, 1 Doug. 279. (d) Lofft. 201.

(e) Andrews v. Russell, Bull. N. P. 81. (f) Westwood v Cowne, 1 Stark. 172. (g) Avenell v. Croker, M. and M. 173. The constable of the adjoining parish cannot interfere, though the proper constable is not to be found

(j) Harris v. Shipway; and Ewyer v. Clifton, Bull. N. P. 182.

when wanted.—Id.

(h) Kenny v. May, 1 M. and Rob. 56.

(i) Briggens v. Goode, 2 Tyr. 447. 2 C. and I. 364. In case of selling goods under a distress without an appraisement, if the sum produced is less than the fair value to the tenant, he may recover the difference without any allegation of special damage.—Knotts v. Curtis, 5 C. and P. 322. 2 Tyr. 449, n.

although he has agreed to take interest on rent in arrear.(k)

The statute applies to all cases where the landlord Fraudulent is by the conduct of his tenant (in removing goods removal. from premises for which rent is due) turned over to 11 G. II., c. the barren right of bringing his action for rent. p. 321. When a tenant openly, and in the face of day, and with notice to his landlord, removed his goods without leaving sufficient on the premises to satisfy the rent then due, and the landlord followed and distrained the goods; it was held that the landlord was justified in so doing, under the statute, although the removal might not be clandestine, yet it was fraudulent.(1) The landlord must show that the goods were removed with a view to elude distress.(m) In fact, there must be some evidence to show that the removal was fraudulent, with intent to elude a distress; and also, that sufficient was not left upon the demised premises to satisfy the landlord's claim.(n) It is not necessary, under the statute, to show, in proof of concealment of cattle, that they were withdrawn from sight; if they have been removed to a neighbour's field, so as to cause difficulty to the landlord in finding them, it is sufficient. (o) A creditor, with the assent of his debtor, may take possession of the goods of the latter, and remove them from the premises for the purpose of satisfying a bond fide debt, without incurring the penalty against persons assisting a tenant in removing his goods from the premises, although the creditor take possession, knowing the debtor to be in distressed circumstances, and under an apprehension that the Under this statute it landlord will distrain. (p)

⁽k) Sherry v. Preston, 2 Chit. 245.
(I) Opperman v. Smith, 4 D. and R. 33. (The removal being fraudulent

or not is a question for the jury.)

(se) The mere removal of goods by the tenant from premises demised when rent is in arrear, is not of itself fraudulent as against the landlord.

—Perry v. Duncan, 7 Bing. 243. 5 M. and P. 19. M. and M. 533.

⁽a) Id. Although a tenant may admit at the trial that the removal was to avoid a distress, yet it is a question for the jury whether a removal was fraudulent within the statute.—John v. Jenkins, 1 C. and M. 227. 3 Tyr.

⁽o) Stanley v. Wharton, 9 Price, 301. (p) Bach v. Meats, 5 M. and S. 200.

must be shown that the goods belong to the tenant, (q)and on a conviction it must distinctly appear that the complainant is the landlord, or the agent, bailiff, or servant, of the landlord; and that the party removing is the tenant. (r) The removal of the goods must have been after the rent became due, to enable the landlord, under this statute, to follow them.(s) It appears, if a lock be broken open to distrain cattle which have been fraudulently removed to elude distress for rent, a constable should be present.(t) The fourth section of this statute. (see p. 322,) which gives a summary remedy before two magistrates, provided the value of the goods shall not exceed £50., does not take away the jurisdiction of the superior courts.(u) And, indeed, although the goods be worth less than £50, the landlord is not confined to his remedy by application to two magistrates.(v) And notwithstanding he might have made his complaint in the first instance before the magistrates, it will not preclude him from afterwards maintaining his action. (w) The acts and orders of the tenant are admissable evidence of his own fraud, and of knowledge by another person co-operating to support an action on the statute against such other person. (x) The privity of the landlord is sufficient against himself. (4) and it seems to be immaterial whether the removal took place by night, or with any particular concealment.(z)

⁽q) Thornton v. Adams, 5 M. and S. 38. The statute applies only to the goods of the tenant, and not those of a stranger, nor lodger of the tenant's.—Postman v. Harrel, 6 C. and P. 225
(r) Rex v. Davis, 2 Nev. and M. 349; and see B. and Adol. 551.

s) Watson v. Main, 3 Esp. 15. S. P. Furneaux v. Fotherby, 4 Camp. 136.

⁽t) Rich v. Wolley, 7 Bing. 651. 5 M. and P. 663.
(u) Bromley v. Holder, M. and M. 175.
(v) Id.

⁽w) Horsefal v. Davy, 1 Stark. 169. Holt, 147. The remedy given by that section is cumulative, and, therefore, the landlord may elect at his

option which course may be most convenient to himself.—Stanley v. Wharton, 10 Price, 138. 9 Price, 301.

(x) Id. But it appears necessary that the party assisting should be also privy to the fraudulent intent of the tenant.—Brooks v. Noakes, 8 B. and C. 537. 2 M. and R. 570.

⁽y) Lister v. Brown, 3 D. and R. 501. (z) Id.

It appears that the rent must have become due before the fraudulent removal of the goods by the tenant, or the landlord cannot follow them.(a)

Trespass lies against a landlord who, on making Wrongful a distress for rent, turned the plaintiff's family out of possession, and retained the premises on which he had impounded the distress. (b) It is not incumbent on the plaintiff in an action for an excessive distress, to prove the precise amount due, as stated in the declaration, the substantive allegation being, that more was distrained for them than was actually due.(c) A recovery in replevin is a bar to an action for an excessive distress.(d) Where growing rent has been reduced by payments of land tax, &c., if the landlord distrains for the whole sum reserved, the tenant may properly sue in case. (e) Where a party distrains for more rent than is due, but only takes a single chattel, he is not liable to an action for distraining for more rent than is due, though the thing taken be of greater value than is necessary to cover the rent actually due, unless there were others of less but sufficient value to be found.(f) It appears trover is not maintainable for goods merely seized as a distress excessive in quantity.(g) In case of an irregular distress, it is necessary to state correctly to whom the rent distrained for is due, as a variance in this respect is fatal.(h) If goods are removed by the landlord

⁽a) Rand v. Vaughan, I Scott, 670. I Bing. N. R. 767. I Hodges, 173.
(b) Etherton v. Popplewell, I East, 139.
(c) Sells v. Hoare, 8 Moore, 451. I Bing. 401. I C. and P. 28. In an action for an excessive distress, the question is, what the goods seized would have sold for at a broker's sale? If it be excessive, the plaintiff is entitled to recover the fair value of them.—Wells v. Moody, 7 C. & P. 59.
(d) Phillips v. Berryman, 3 Dougl. 206

entitled to recover the fair value of them.—Wells v. Moody, 7 C. & P. 59.

(d) Phillips v. Berryman, 3 Dougl. 286.

(e) Carter v. Carter, 5 Bing. 406. 2 M. and P. 723.

(f) Avenell v. Croker, M. and M. 172.

(g) Whitworth v. Smith, 1 M. and Rob. 193. But if a party pay money in order to redeem his goods from a wrongful distress for rent, he may maintain trover against the wrong doer.—Skipwick v. Blanchard, 6 T. R. 298. Case lies as well as trespass for an excessive distress, after tender of the rent due.—Holland v. Bird, 3 M. and Scott, 363. 10 Bing. 15.

(h) Ireland v. Johnson, 1 Bing. N. R. 162. 4 M. and Scott, 706. In actions for irregular distresses, the practice is, to make either the landlord

actions for irregular distresses, the practice is, to make either the landlord alone, or the landlord and broker, defendants, and not to join appraisers, &c.; and if a plaintiff do join them, the judge will oblige him to make out his case by strict rule, and not allow questions to be put to a witness who

which were not taken originally under the distress, nor included in the inventory, because they were not discovered at the time, the tenant may maintain trover.(i)

Pound keeper.

A pound keeper is bound to receive everything offered to his custody, and is not answerable whether the thing were legally impounded or not. (1)

Expenses of distress.

There is no statutary limit to the amount of costs and charges for levying and impounding a distress taken for rent above £20, where it is impounded on the premises, by virtue of 11 G. II., c. 19, s. 10.(k) The 57 G. III, c. 93, regulating the costs and charges for levying and disposing of a distress for rent under £20, does not apply to a case of a distress taken for more than £20, made of goods which are appraised at and sold for less than that amount.(1) It has been held at nisi prius, on a distress for rent, where the rent distrained for does not exceed £20, one sworn appraiser only is necessary, since the statute 57 G. III., c. 93.(m)

Double recoverable.

The 4 G. II., c. 28, enacts, that tenants for life, value when lives, or years; or persons coming in under or by collusion with them, holding over after the determination of the estate, after demand made, and notice in writing given by the landlord, or his agent, to deliver up possession, such tenants continuing to hold over, shall pay to the person so kept out of possession at the rate of double the yearly value of the lands, tenements, &c., for so long time as

has been cross examined, or a witness to be called back with a view of fixing such appraisers, &c.—Child v. Chamberlaine, 6 C. and P 213. Nev. and M. 520. 5 B. and Adol. 1049.

⁽i) Bishop v. Bryant, 6 C. and P. 484. (j) Badkin v. Powell, Cowp. 476; and see Brandling v. Kent, 1 T. R. 60.

⁽k) Child v. Chamberlaine, 3 Nev. and M. 520. 5 B. and Adol. 1049.

⁽l) 6 C. and P. 213. (m) Fletcher v. Saunders, 6 C. and P. 747. 1 M. and Rob. 375. But it is necessary that goods seized under a distress for rent should be appraised by two sworn appraisers, under 2 Wm. and M., sess. 1, c. 5, s. 2, notwithstanding the schedule of the statute 57 G. III., c. 93, directs that for an appraisement under £20, whether by one broker or more, shall be charged only sixpence in the pound on the goods.—Bishop v. Bryant, 6 C. and P. 484. If, to save expense, the appraisers are not called in, and the tenant consents to the broker valuing the goods, this will be no ground of action for inversely it. of action for irregularity.—Id.

the same are detained, to be recovered by action of debt.

Under this statute, the action for double value on Double the statute does not lie against a weekly tenant. (n)

Acceptance of single rent is a waiver of the double

value, given by stat. 4 G. II., c. 28.(o)

Tenants in common cannot sue jointly for double value, for holding over when there has been no joint demise.(p)

An action on this statute may be brought after a

recovery in ejectment.(q)

By the statute 11 G. II., c. 19, s. 18, if any te-11 G. II., a nant(r) shall give notice(s) of his intention to quit Double rent the premises holden by him, at any time mentioned in such notice, and shall not deliver up the possession thereof accordingly; then such tenant, his executors, or administrators, shall thenceforward pay to the landlord double the rent which he should otherwise have paid; to be levied, sued for, and recovered, at the same times, and in the same manner, as the single rent could; and such double rent shall continue during all the time such tenant shall continue in possession.

This statute only applies to those cases where the tenant has the power of determining his tenancy by a notice; and where he has actually given a valid notice, sufficient to determine such tenancy.(t) If a tenant from year to year gives his landlord notice that he will quit upon a contingency, and do not quit when the contingency happens, he is not liable to an action on this statute for double rent.(u)

(r) A tenant for a year under a parol demise, is a tenant within this statute.—Timmins v. Rawlinson, 3 Burr. 1603.

⁽n) The statute being penal, is to be construed strictly.—Lloyd v. Rose-

bee, 2 Camp. 453.

(o) Doe d. Cheney v. Batten, Cowp. 243. 9 East, 214, n.

(p) Wilkinson v. Hall, 1 Scott, 675. 1 Bing. N. R. 713. 1 Hodges, 170.

⁽q) Soulsby v. Nevin, 9 East, 310. That is, during the time the tenant holds over after the expiration of the landlord's notice to quit.—And see Ryal v. Rich, 10 Bast, 48.

⁽s) It is not necessary that this notice should be in writing.—Id.
(f) Johnston v. Huddleston, 7 D. and R. 411. 4 B. and C. 922.
(u) Tarrance v. Elkington, 2 Camp. 591. It seems there must be some

fired time mentioned, as the notice in this case was, that the tenant would

fact, the tenant not quitting at the end of his lease, pursuant to a notice for that purpose given by his landlord, is liable to double rent under this statute. (v)

Under this statute the double rent may be either

recovered by distress(w) or action.

Taxes, &c.

In the absence of any express stipulation to the contrary, the tenant will, according to 30 G. II., c. 2, s. 15, have to pay all sums of money that shall be rated on the premises, and to deduct so much out of the rent as the landlord ought to have paid; that is, land tax, ground rent, and survey rate, which are taxes chargeable to the landlord; (x)but with respect to the assessed taxes,(y) poor's rate, (z) highway rate, watch and lamp rates, these belong to the tenant to pay, and in default thereof his goods are liable to be distrained upon for the amount due. All rates payable by the landlord should be deducted from the current year, as they cannot be deducted, or the amount recovered of the landlord, in any subsequent year.(a) Although the landlord and tenant's names are down in the rent book

quit as soon as he could possibly get another situation; -this did not enable the landlord to recover under the statute, although he could have proved that the tenant had got another situation.

(v) Messenger v. Armstrong, I T. R. 53.
(w) See the word "levy" in the act. This method was pursued in Timmins v. Rawlinson.

(x) If the tenant agrees to pay a net rent, this has been decided to be a rent clear of all deductions.—Bennett v. Womack, 3 C. and P. 96. 1 M. and R.694. 7 B. and C. 627.

A reservation to a landlord of rent, "free from all and all manner of taxes," has been held to extend to the land tax, and all taxes subsequently imposed.—Bradbury v. Wright, Doug. 602. Amfield v. White, 1 R. and M.

On a grant of a fee farm rent, "without any deduction, defalcation, or abatement, for or in any respect whatsoever," the tenant was held liable to pay the rent without deducting land tax.—Bradbury v. Wright, whi

(y) The assessed taxes are demandable quarterly, and can be so enforced by distress; but it is not usual to collect them oftener than every half

year. The authority of the collector is sufficient to the broker to enable him to proceed immediately.

(z) The poor's rates are, in general, collected quarterly, sometimes immediately after the rate is made, viz., at the commencement of the quarter and sometimes at its conclusion. The collector of these taxes is not emanded. powered of his own authority to order a distress to be made on the premises; but if the tenant neglect to pay the same, he will be summoned before the magistrates, who may sign a warrant of distress against the tenant's goods. (No demand need be made of this rate, the publication of

the same being considered sufficient notice.)
(a) Andrew v. Hancock, 3 Moore, 278. 1 B. and B. 37; and see pp. 148, 149; and see Spragg v. Hammond, 4 Moore, 431. 2 B. and B. 50.

as to land tax, it will be considered as the rating of the tenant.(b)Although there be an exception in a building lease of the land tax in favour of the tenant, the landlord is not liable to pay the increased amount in consequence of improvements, but only the old land tax.(c) And although the landlord may have covenanted to pay the land tax, the lessee is not entitled to deduct for more than would be assessed on the amount of his rent, although the tenant may have actually paid more. (d) Where the owner of a house, in consideration of a premium, demised it at one third of its annual value, and afterwards redeemed the land tax; held that he was entitled to receive from the tenant an annual payment equal to two thirds of the land tax so redeemed.(e)

Neither the removal of a distress for rent from the demised premises after five days, nor an ap- observapraisement of the distress, takes away the tenant's cases in reright to replevy.(f)

plevin.

The goods distrained under a magistrate's warrant

are not repleviable.(g)

In a replevin on a distress for a poor rate, under the 43 Eliz., c. 3, the treble damages given to the defendant by s. 19, are thrice the amount of the damages found by the jury. (h)

⁽b) Rex v. Mitcham, Cald. 276. S. P. in re St. Lawrence, Winchester, Cald. 379. The land tax, with respect to the public, is considered as the tenant's tax.

⁽c) Hyde v. Hill, 3 T. R. 377. Rex v. Scott, 3 T. R. 602.
(d) Whitfield v. Brandwood, 2 Stark, 440. And the landlord will discharge his covenant by paying the land tax according to the rent he receives, although the premises may be taxed at a higher rate.—Yea v. Leman, 1 Wills. 21; and see Watson v. Home, 7 B. and C. 285, where it was held that the lessor was liable to pay taxes only in proportion to the rent received, and not according to the improved value. -And see also 1 M. and R. 191.

⁽e) Ward v. Const. 10 B. and C. 634.
(f) Jacob v. King, 5 Taunt. 451. 1 Marsh, 135. If the goods remain

unsold the tenant may replevy after five days.—1 Chit. 196, a.

(g) Wilson v. Weeler, 1 B. and B. 57. 3 Moore, 294. That is, when the magistrate has competent jurisdiction.—And see Wooton v. Harvey, 6 East, 75; and see also Rex v. Hoseason, 14 East, 605. But an action of replevin may be maintained for goods distrained under a warrant from commissioners authorised by act of parliament to levy rates for specific local purposes, with power of distress.—Attorney General v. Brown, I Swans.

⁽h) Newman v. Barnard, 3 M. and Scott, 748. 10 Bing. 274. The

Removal of the action in replevin. The recordari facias loquelam stays all further proceedings in the county court, though delivered after interlocutory judgment, if before final judgment.(i)

Replevin bond.

Where a person had acted for many years as clerk of replevin to several, and had been recognized as such by the present sheriff, but it did not appear that he had been appointed to his office under the stat. 1 & 2 P. & M., c. 12, the court granted a prohibition to restrain the sheriff from proceeding in a suit where a replevin had been granted by such officer. (j) It is sufficient if the sheriff take one pledge on a replevin for distraining cattle damage feasant. (k)

Service of notice of replevy by an infant, and who is neither a bailiff nor sheriff's officer, is illegal

and void. (l)

Parties in proceedings against sheriff, &c.

The high and under sheriff, and replevin clerk, are all answerable to the defendant in replevin, for the sufficiency of the pledges de retorno habendo.(m) An action on the case against the sheriff for taking insufficient pledges in replevin, ought to be brought by the person making cognizance where there is no avowant on the record.(n)

If insufficient pledges, de retorno habendo, be taken by the officer of the court below in replevin, the remedy against him is by action, and the court will not order him to pay the costs recovered by the defendant in replevin.(o) The court of king's bench refused an attachment against the sheriff, for neglecting to take a replevin bond, as the party injured might bring his action.(p)

court refused to stay the proceedings on a judgment of non pros. in such an action, on payment of the single amount of the rate, thrice the charges of the levy, and the costs—Id.

of the levy, and the costs—Id.

(i) Bevan v. Brothesk, 2 Burr. 1151. These writs are conditional.—
Lofft. 52). The plaintiff may remove without cause; but a defendant cannot do it without.—Id.

(j) Griffiths v. Stephens, 1 Chit. 196. (k) Hucker v. Gordon, 1 C. and M. 58. 3 Tyr. 107. (l) Cuckson v. Winter, 2 M. and R. 313. (m) Richards v. Acton, 2 W. Black. 1220.

(m) Richards v. Acton, 2 W. Black. 122 (n) Page v. Eamer, 1 B. and P. 378. (o) Tesseyman v. Gilbert, 1 N. B. 292.

(p) Rex v. Lewis 2 T. R. 617.

The sheriff is not bound to warrant, or inquire As to ininto the actual sufficiency of the pledges in a re-sufficiency. plevin bond; if they are apparently responsible it is sufficient, (q) unless it can be shown he had notice of the fact, or neglected the means of information within his power, and did not act under the circumstances, and considering the information he had obtained with a reasonable degree of caution, and the general reputation as to the want of credit of the sureties in the neighbourhood of their respective residences, is evidence against the sheriff, who it seems is liable, if either of the sureties be insufficient.(r) Where an avowant in replevin obtained a verdict against the sheriff for having taken insufficient pledges on a replevin bond, which had been taken by his replevin clerk, against whom he brought an action for negligence; and the attesting witness to the bond proved that the sureties did not reside within the bailiwick of the sheriff, and that one of them occupied a well stocked farm at the time the bond was executed; held that such clerk was not answerable, as it was not incumbent on him to make personal inquiries as to the responsibility of the sureties; if they appear responsible it is sufficient.(8)

In an action against the sheriff for taking insufficient pledges in replevin, the plaintiff cannot recover

⁽q) Hindle v. Blades, 5 Taunt. 225. 1 Marsh, 27.
(r) Scott v. Waithman. 3 Stark, 168. 1 Phillips' Evid. 433. An action is not maintainable against a sheriff for not restoring the goods, for his duty under the statute 13 Edw. I., is only to take pledges for that object. Hucker v. Gordon, 3 Tyr. 107. 1 C. and M. 58. In an action against the sheriff for taking insufficient sureties in replevin, if the sheriff has assigned the replevin bond to the plaintiff, it is unnecessary to prove the execution of the sureties, though averred in the declaration.—Barnes v. Lucas, R. and M. 264. And the bond produced by the sheriff may be admitted without proof against him, as duly executed.—Scott v. Waithman, 1 Phil. Evid. 433. 3 Stark, 168.
(s) Sutton v. Waite, 8 Moore, 27. It seems that when the offered sure-

⁽s) Sutton v. Waite, 8 Moore, 27. It seems that when the offered sureties reside out of the bailiwick of the sheriff by whom the bond is taken, it is necessary to search the sheriff's office where they do reside, to ascertain whether any process has been sued out against them before the bond is taken.—Id. Very slight evidence of the insufficiency of the sureties is enough to throw the proof of the contrary upon the sheriff.—Saunders v. Darling, Bull. N. P. 60. And in proof of the insufficiency of the circumstances of them, it is good evidence to show that they were in debt, had been applied to for payment, and promised payment, but did not pay.—Gwyllim v. Scholey, 6 Esp. 100.

damages beyond the penalty of the bond, if for more than double the value of the goods distrained.(t) In an action on the case against the sheriff for taking insufficient sureties in replevin, the assignee of the replevin bond cannot recover as special damage, beyond the penalty of the bond, the costs incurred by him in suing the sureties without effect, unless notice of his intention to sue them had been previously given to the sheriff.(u)

Assignment of bond, see p. 238.

A defendant in replevin is not entitled to an assignment of the replevin bond, on the plaintiff's neglecting to declare, at the next county court, if he himself have not appeared to the summons; and if he obtain assignment and bring an action, the court of exchequer will stay the proceedings, (v) without payment of costs by the defendant, which will be ordered to abide the event of the proceedings on the re-fa-lo.(w) A rent charge is within the meaning of the stat. 11 G. II., c. 19, s. 23; upon a replevin therefore in a distress for such a rent, the sheriff may take and assign a bond, as in replevin, for any other kind of rent.(x) Although the bond may not be in all points conformable to the directions of the statute, yet the same may be good and assignable.(y) A bond, conditioned to prosecute the action (in replevin) with effect, and to indemnify the sheriff, is good, and may be assigned,

⁽t) Yea v. Letheridge, 4 T. R. 433. But in a similar action it was held in C. P. that the plaintiff might recover damages beyond the penalty of the bond for more than double the value of the goods distrained.—Concern v. Letheridge, 2 H. Black. 36. The sheriff is liable in an action for taking insufficient pledges in replevin to the amount of the penalty in the bond, viz., double the value of the goods distrained.—Paul v. Goodluck, 2 Bing. N. R. 224. 1 Hodges, 370; and see 2 Scott, 363.

(u) Baker v. Garratt, 10 Moore, 324. 3 Bing 56.

(v) On an affidavit being made that a writ of recorder facias loqueless has been sued out.

has been sued out.

⁽w) Seal v. Philips, 3 Price, 17.

⁽x) Short v. Hubbard. 2 Bing. 349. 9 Moore, 667. 10 Moore, 107; but see Bulpit v. Clarke, 1 N. R. 56. But a bond so taken by the sheriff, and conditioned for appearance at the next county court, prosecuting the plaintiff with effect, making a return if adjudged, and indemnifying the sheriff from all charges and damages by reason of the replevin, is author-

ised by the above statute.

(y) Austen v. Howard, 7 Taunt, 28, 327. 1 Moore, 68. 2 Marsh, 352.

Though a replevin bond be executed by one of the sureties only, it is, nevertheless, available by the sheriff against such surety.—Id.

although it do not require, by the condition, that the suit shall be prosecuted without delay.(2) The bond may be assigned to the avowant only, who may bring an action upon it, without joining the party

making cognizance.(a)

The condition of a replevin bond is not satisfied Forfeiture. by a prosecution of the suit in the county court; but if the plaint be removed by re-fa-lo into a superior court, it must be prosecuted there with effect, and a return made if adjudged there.(b) A defendant is entitled to an assignment of the replevin bond, if the plaintiff do not appear in the county court, and prosecute according to the condition.(c) And he may sue on the bond, as assignee of the sheriff, in the superior courts, though the replevin be not removed out of the county court.(d) The condition of a replevin bond for prosecuting the suit, "with effect," means prosecuting it "with success," and therefore, if a plaintiff in replevin fails, the condition is broken, and the defendant is not restrained from suing on the bond, though he omits to sue out a writ de retorno habendo, and cause elongated to be returned thereon.(e) Allowing two years to elapse without proceeding, is a breach of the condition of a replevin bond to prosecute the replevin without delay.(f) If a plaintiff in replevin be nonsuited for want of a plea in bar, the avowant may sue the sureties on the bond, and need not execute a writ of inquiry for his damages.(g) If the plaintiff in replevin be nonsuited, the defendant is not bound to have his damages assessed by the jury under stat. 17 Car. II., c. 7, or take the earliest moment

⁽z) Dunbar v. Dunn, 10 Price, 54.
(a) Archer v. Dudley, 1 B. and P. 381, n. And both avowant and person making cognizance may take an assignment of a replevin bond, and sue jointly upon it.—Phillips v. Price, 3 M. and S. 180.

(b) Gwillim v. Holbrook, 1 B. and P. 410.

(c) Dias v. Freeman, 5 T. R. 195.

⁽d) Id.
(e) Perreau v. Beavan, 8 D. and R. 72. 5 B. and C. 284.
(f) Axford v. Perrett, 4 Bing. 586. 1 M. and P. 476. And the obligee might recover on such breach, although judgment of non pros. was never signed in the county court.—Id.

(g) Waterman v. Yea, 2 Wils. 41.

to prosecute his writ de retorno habendo.(h) If judgment be given against the plaintiff in replevin, for not prosecuting his suit with effect, his sureties on the bond will be answerable to the avowant, notwithstanding he has afterwards proceeded on the 17 Car. II., c. 7, s. 2, and obtained a judgment under a writ of inquiry, in pursuance of that statute, to recover the arrearages of rent and costs.(i) In an action on a replevin bond, conditioned to prosecute with effect and without delay, it is a sufficient breach of the condition, that the plaintiff in replevin did not use due diligence in the prosecution of the suit.(j)

Proceedings

A plaintiff who is assignee of a replevin bond may declare against one of the sureties in detinet only.(k) The court of C. P. will not set aside proceedings on a replevin bond, because the action is commenced before breach, for it may be pleaded.(1) Growing crops may be considered in the nature of goods and chattels, under the statute 11 G. II., c. 19, as they may be distrained in the same manner as articles of the latter description. Where, therefore, the condition of a replevin bond was, that the defendant should prosecute his action with effect against the plaintiff, for taking and detaining his goods, chattels, and growing crops; and in the declaration the bond was set out as conditioned to prosecute with effect, for taking and detaining the goods and chattels in the said condition mentioned;

⁽h) Hefford v. Alger, 1 Taunt. 218. And he may again distrain the same goods for rent subsequently accrued previously to executing his retorno habendo, without waiving his action against the sureties in the bond.

⁽i) Turner v. Turner, 4 Moore, 606. 2 B. and B. 107.

(j) Harrison v. Wardle, 2 Nev. and M. 703. 5 B. and Adol. 146. But where the plaint was removed by re-fa-lo, and the plaintiff in replevin appeared, and the defendant did not;—held that subsequent delay was not a breach of the bond, even though the sheriff should have neglected to summon the defendant as directed by re-fa-lo.—Id. Semble, that the assignees of a replevin bond are not estopped from replying a fact contrary to the sheriff's return to the re-fa-lo.—Id. Quære, whether there can be a breach of a condition to prosecute with effect before action determined.—Id.

⁽k) Wilson v. Hobday, 4 M. and 8, 120, (l) 5 Taunt. 776.

—held that this was no variance.(m) The plaintiff and defendant in replevin referred the cause to an arbitrator, and agreed, without the privity of the replevin bond sureties, that the bond should stand as a security for the performance of the award;held that the sureties were discharged.(n) It is no plea to an action against sureties on a replevin bond, that the replevin cause was referred to an arbitrator, and that he, without their knowledge, enlarged the time for making his award. (o) In an action against the sheriff for taking insufficient pledges in a replevin bond, the court will not stay proceedings on an affidavit that the cause was referred without the consent of the sureties, that being matter in defence at the trial.(p) Where one of the sureties to a replevin bond was a material witness for the plaintiff in the cause, the court of C. P. allowed another to be substituted in his stead, on his being approved of by the pronothority, and giving the defendant's attorney notice to appear before him to sanction such approval; as, in case the surety so substituted should be insufficient, the defendant would be deprived of his remedy against the sheriff on the bond.(q)

The two sureties in a replevin bond are together Liability of liable only to the amount of the penalty in the bond, sureties. and the costs of the suit on the bond. (r) If a sheriff take a replevin bond from one surety only, and he be sued thereon by the person making cognizance for having taken insufficient pledges, who recovers damages and costs in such action; -held that the sheriff having sued the surety on the bond for not having returned the goods, and suggested breaches according to the statute 8 and 9 W. III., c. 11, is

⁽m) Glover v. Coles, 7 Moore, 231. 1 Bing. 6.
(n) Archer v. Hall, 4 Bing. 464. 1 M. and P. 285; and see Ireland Bank v. Beresford, 6 Dow. 238.

⁽c) Aldridge v. Harper, 10 Bing. 118. 3 M. and Scott, 519.
(p) Dale v. Gordon, 2 M. and Scott, 532.
(q) Bailey v. Bailey, 7 Moore, 439. 1 Bing. 92.
(r) Hefford v. Alger, 1 Taunt. 218. The liability of sureties in a replevin bond is limited to the amount of rent in arrear at the time of the distress, and costs; but they are not liable for subsequent rent.—Ward v. Henley, 1 Y and I. 285.

not entitled to recover the costs incurred in defending the action against him as such sheriff; and that as the surety is deprived of calling on his co-surety for contribution, he is only liable to a moiety of the damages awarded by the jury in the action against the sheriff.(s)

(s) Austen v. Howard, 1 Moore, 68. 7 Taunt. 28. 2 Marsh, 352.

END OF PART 1.

PART II.

EJECTMENT.

An ejectment is a possessory action, (a) wherein Action of the title to lands and tenements may be tried, and ejectment. the possession recovered in all cases where the party claiming title has a right of entry, whether such title be to an estate in fee, fee tail, for life, or for years.

In order to maintain an ejectment, the party at How mainwhose suit it is brought must have been in possession, or at least clothed with the right of possession at the time of the actual or supposed ouster.(b) Hence this action is termed a posses-

sory action.

The party who has the legal estate in the lands in Party havquestion must prevail; therefore a party who claims ing the legal under an elegit subsequent to a lease granted to a tenant in possesion cannot recover, although he gives notice to the tenant that he does not intend to disturb the possession, and only means to get into the receipt of the rents and profits of the estate. (c)

The system of this action is thus: A., the per- The system

(a) This action is a fictitious mode of legal proceedings, by which pos- The fiction sensory titles to corporeal hereditaments and tithes may be tried, and of this apposession obtained without the process of a real action.—See Serjeant tion.

Adams' Treatise on Ejectment, chap. 1. The courts continue to regard it with great liberality; and the remedy by ejectment is, at this present time, a safe and expeditious mode of trying possessory titles, unembarrassed by the difficulties attendant on real actions, and well adapted to the ends of substantial justice.—Id.

By the statute 3 and 4 W. IV., c. 27, intituled, "An Act for the limita- 3 and 4 W. tion of Actions and Suits relating to real property, and for simplifying IV., c. 27. the remedies for trying the rights thereto," all real and mixed actions are abolished, except for dower, quare impedit, and ejectment.

(b) He must have a right of entry upon the lands at the time of the

demise in the declaration; and whatever takes away this right of entry or possession, and turns the same into a right of action, will deprive the claimant of his remedy by ejectment, although the legal title still remains

(c) A right of entry may be destroyed three ways: first, by discontinu- Rights of ance; secondly, by descent; and thirdly, by the statute of limitations. entry.

of this ac-

son claiming title delivers to B., the person in possession, a declaration in ejectment, in which C. and D., two fictitious persons, are made respectively plaintiff and defendant; and in which C. states a fictitious demise of the lands in question from A. to himself for a term of years, and complains of an ouster from them by D. during its continuance. To this declaration is annexed a notice, supposed to be written and signed by D., informing B. of the proceedings, and advising him to apply to the court for permission to be made defendant in his place, as he, having no title, shall leave the suit undefended. Upon the receipt of this declaration, if B. do not apply within a limited time to be made defendant, he is supposed to have no title to the premises; and upon an affidavit that a declaration has been regularly served upon him, (d) the court will order judgment to be entered against D., the casual ejector, and possession of the lands will be given to A., the party claiming title.

Defence to action.

If, however, B. applies pursuant to his notice to defend the action, the courts annex certain conditions to the privilege. Four things are necessary to enable a person to support an ejectment, namely, title, lease, entry, and ouster; and as the three latter are only feigned in the modern practice, C., (the plaintiff,) would be nonsuited at the trial if he were obliged to prove them. The courts therefore compel B., if made defendant, to enter into a rule, generally termed the consent rule, by which he undertakes that, at the trial, he will confess the lease, entry, and ouster, to have been regularly made, and rely solely upon the merits of his title; and lest at the trial he should break this engagement, another condition is also added, that in such case he shall pay the costs of the suit, and shall allow judgment to be entered against D., the casual ejector.

Alteration of declaration.

These conditions being complied with, the declaration is altered by making B. the defendant instead

(d) See Affidavits, p. 22.

of D., and the cause proceeds to trial in the same manner as in other actions.(e)

The action of ejectment is not confined solely to Ejectment, the common the trial of disputed titles, but it is also the compression for mon remedy for landlords, on the determination of landlords. tenancies, to recover the possession of their lands

from refractory tenants.(f)

A tenancy may be determined in three several Determinaways: first, by the effluxion of time, or the hap-nancy. pening of a particular event; secondly, by a notice from the landlord to the tenant to deliver up the possession, or vice versa; and thirdly, by a breach on the part of the tenant of any condition of his tenancy, as by the non-payment of rent, or of the non-performance of a covenant.

By the 4 G. 2, c. 28, s. 2,(g) in all cases be-4G 2, where tween landlord and tenant, as often as it shall hap-distress. pen that one half year's rent shall be in arrear. and the landlord or lessor to whom the same is due hath right by law to re-enter for the non-payment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a declaration in ejectment for the recovery of the demised premises; or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then to affix the same upon the door of any demised messuage; or in case such ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements, or hereditaments, comprised in such declaration in ejectment; and such affixing shall be deemed legal service thereof; which service or affixing such declaration in ejectment shall stand in the place and stead of a demand and re-entry. And in case of judgment against the casual ejector, or nonsuit for not confessing lease, entry, and ouster, it shall be made to

⁽e) For the proceedings in this action in the different courts, see Tidd's

Practice, and Chitty's Archbold.

(f) See Ad. on Ej., c. 5. See the head, Notice to Quit.

(g) This statute substitutes the service of a declaration in ejectment, in lieu of a formal demand of rent, to work a forfeiture.—Doe d. Lawrence v. Shawcross, 5 D. & R. 711. 3 B. & C. 752.

appear to the court where the said suit is depending, by affidavit, or be proved upon the trial, in case the defendant appears, that half a year's rent was due before the said declaration was served; and that no sufficient distress was to be found(h) on the demised premises, countervailing the arrears then due, and that the lessor in ejectment had power to re-enter, he shall recover judgment and execution in the same manner as if the rent in arrear had been legally demanded, and a re-entry made. And in case the lessee, his assignee, or other person, claiming or deriving under the lease, shall permit judgment to be recovered in an ejectment under the statute, and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without filing any bill for relief in equity, within six calendar months after such execution executed, they shall be barred and foreclosed from all relief or remedy in law or equity, other than by a writ of error, or reversal of the judgment; and the lessor shall thenceforth hold the demised premises discharged from the lease, provided that nothing is to extend to bar the right of any mortgagee of such lease, or any part thereof, who shall not be in possession so as he shall, within six calendar months after judgment obtained and execution executed, pay all rent in arrear, and all costs and damages sustained by the lessor, or person entitled to the remainder or reversion, and perform all the covenants and agreements on the lessee's part.

Permitting judgment, &c.

And by s. 3, upon lessees, their assignees, or persons claiming any right, title, or interest, in the lease, filing any bill in equity for relief, they are not to have or continue any injunction on the proceedings at law, on an ejectment under the statute, unless, within forty days after answer filed, they bring into court the rent in arrear to remain until the hearing; or to

⁽h) Strict search should be made over the premises to ascertain that no distress can be found; in fact, every part of the premises should be searched.—Rees d. Powell v. King, For. 19. 2 B. & B. 514. But if the landlord was prevented by the tenant from searching he may recover.—Doe d. Chippendale v. Dyson, M. & M. 77.

be paid out to the lessor, subject to the decree of the court. And by s. 4, if the tenant or his assignee shall at any time before trial of an ejectment 4. to payunder the statute, pay or tender to the lessor, his and costs. executors or administrators, or the attorney in the cause, or pay into court all the rent and arrears, together with the costs, all further proceedings are to cease and determine; (i) and if the lessees be relieved in equity,(j) they are to hold the land ac-Equitable cording to the lease, without any new lease being relief. made.(k)

By the 7 G. 2, c. 20, in ejectments by mort- Ejectment gagees for the recovery of the mortgaged premises, by mort-where no suit in equity is depending for a fore- 7 G.2, c. 20. closure or redemption, if the person having a right to redeem shall, at any time pending the action, pay to the mortgagee, or in case of his refusal, bring

(i) The rent, &c., must be paid before trial to stay proceedings.—Roe d. West v. Davis, 7 East, 763. This statute is not confined to cases of ejectment brought after half a year's rent due, where no sufficient distress was to be found on the premises.—Id. A tender of rent, before the declaration is delivered, will stay the proceedings under the statute.—Goodright d. Stevenson v. Noright, 2 W. Black. 746. Upon payment of the rent due and costs, the rent must be calculated only to the last rent day, not to the day of computing.—Doe d. Harcourt v. Roe, 4 Taunt. 883.

(i) Where compensation can be made, relief will be given against for-

(j) Where compensation can be made, relief will be given against forfeiture by breach of covenant by lessee.—Davies v. West, 12 Ves. jun. 475.
But not for breach of covenant not to assign without licence.—Hill v.
Barclay, 18 Ves. jun. 63. Nor for breach of covenant to keep insured.—
White v. Warner, 2 Mer. 459. If there are other grounds of forfeiture besides non-payment of rent, the court will not after execution set the proceedings aside on payment of rent and costs.—Doe d. Lambert v. Roe, 3 Dowl. P. C. 557.

(k) The objects of this statute were, first, to abolish the form of demand Objects of (which, prior to this act, was necessary) for rent, where no sufficient disthe statute 4 tress can be found upon the premises to answer the demand; secondly, in G. 2. cases of beneficial leases which may have been mortgaged to protect the mortgagees against the fraud or negligence of the mortgagers; thirdly, to render the possession of the landlord secure after he has recovered the lands; and fourthly, to take from the court the discretionary power they formerly exercised of staying the proceedings at any stage of them, upon payment of the rent in arrear and costs. The first of these objects is effected by permitting the landlord to bring his ejectment without previously demanding the rent; the second, by permitting a mortgagee not in possession to recover back the premises at any time within six months after execution executed, by paying all the rent in arrear, damages, and costs, of the lessor, and performing all the covenants of the lease.—Doe d. Whitfield v. Roe, 3 Taunt. 402. The third, by limiting the time for the lessee, or his assigns, to make an application to a court of equity for relief to six calendar months after execution executed; and the fourth, by limiting the application of the lessee to stay proceedings upon payment of cases of beneficial leases which may have been mortgaged to protect the limiting the application of the lessee to stay proceedings upon payment of the rent in arrear and costs, to the time anterior to the trial, and making it eompulsory upon the court to grant the application when properly made.

—7 East, 363.

into court all the principal moneys and interest due on the mortgage, and also costs, to be computed by the court or proper officer appointed for that purpose, the same shall be deemed and taken to be in full satisfaction and discharge of the mortgage, and the court shall discharge the mortgagor of and

from the same accordingly. (l)

11 G. II., a. 19, s. 12. Tenants to give land-

By the stat. 11 G. II., c. 19, s. 12, every tenant upon whom any declaration shall be delivered, is forthwith to give notice thereof to his landlord or lords notice his bailiff or receiver, under penalty of forfeiting the of ejectment value of three years' improved or rack rent of the premises demised or holden, to the person of whom he holds, to be recovered by action of debt.(m)

And by s. 13, the court wherein any ejectment

Cases under 7 G. 2

Section 13.

(I) Where the mortgagor has agreed to convey the equity of redemption, the court will not stay the proceedings on payment, &c.—Goodtitle &.
Taysum v. Pope, T. R. 185. If the mortgagor gives notice of other demands, as cause against the order obtained by mortgagor to stay proceedings, &c., the nature and amount of such demands must be specified .-Goodtitle d. Leon v. Lansdown, 3 Anst. 937. The mortgagor on staying proceedings under this statute is bound to pay only the principal and interest appearing due on the mortgage deed, with costs, but not for by-gone interest, or the expenses of preparing the mortgage.—Doe d. Blagg v. Steel, 1 Dowl. P. C. 359. But where the principal sum became due on a mortgage, in default of payment of interest on one of certain days mentioned, upon which default power had been given to sell, this case was considered as not falling within the provisions for relief under the statute.—Goodtitle d. Green v. Notitle, 11 Moore, 491. Where the tenant of a mortgagor had suffered the mortgagee to obtain possession by neglecting to appear to the action, the court set aside the judgment and execution, and stayed proceedings on the terms of the statute.—Doe d. Tubb v. Roe, 4 Taunt. 887. But the court would have had no power if the possession had been recovered against the mortgagor, and undefended.—Id. The mortgagor of a lease has a further period of three months (from the end of the six months from the time of execution issued by his neglect, to pay rent and costs, or file his bill) within which he may, by payment of rent and costs, and filing his bill, and lodging his money in court, thereby save his lease from forfeiture.—O'Reilly v. Featherstone, 2 Dow. & Clark, 39. 4 Bligh, N. S. 161. Where there are two mortgages, principal, interest, and costs, must be paid on both to induce the court to stay proceed-

ings under this act.—Roe d. Kay v. Soley, 2 W. Black. 726.
Upon doubts existing as to the amount of what is due between the parties, the courts will refer the same to the proper officer, who will tax the costs, and the rule must follow the words of the statute, and that all just allowances and deductions will be made.—Goodright v. Moor, Barn. 176. And if, upon taxation, the amount is not paid, the lessor must proceed in the suit, and cannot have an attachment. - Hand v. Dinley, Stran.

Practice be-11 6. 2,

(m) Prior to the remedy given by this statute, the landlord, it seems, was not permitted to defend even when he did receive notice, unless the fore the stat. tenant consented to become a co-defendant with him.—Litt. Pr. Reg. 674. And no means existed by which the tenant could be compelled to appear, and be made such co-defendant, (Goodright v. Hart, Stran. 880,) which occasioned great inconvenience to landlords particularly, when the tenants is brought may suffer the landlord to make him- Section 13. self defendant by joining with the tenant to whom a declaration in ejectment shall be delivered, in case he shall appear; but if he shall refuse or neglect to appear, judgment is to be signed against the casual ejector; and if the landlord of any part of the premises shall desire to appear by himself, and to consent to enter into the like consent rule, the court may permit him to do so, and order a stay of execution upon the judgment against the casual ejector, until further order.(n)

from negligence or fraud frequently omitted to appear themselves, or to give the landlords the necessary notice. This section of the act does not extend to the tenant of a mortgagor who does not give him notice of an ejectment brought by the mortgages to enforce an attornment.—Buckley v. Buckley, l T. R. 647. The improved or rack rent under the statute will be considered a fair rent at the time of delivering the declaration in ejectment.—Crocker v. Fothergill, 2 B. & A. 652. Where the landlord ejectment.—Crocker v. Fothergill, 2 B. & A. 652. Where the landlord was an infant, and the tenant had neglected to appear, the judgment against the casual ejector was set aside upon terms.—Doe d. Thoughton v. Roe, 4 Burr. 1996. Upon payment of costs the court will let in a landlord to defend, where judgment has gone by default, in consequence of the neglect of the tenant in giving notice.—Doe d. Meyrick v. Roe, 2 C. & I. 682. Doe d. Ingram v. Roe, 11 Price, 507. If there has been collusion, the remedy against the tenant as to costs of the application to set aside the remedy against the tenant, as to costs of the application to set aside the judgment, must be recovered by action against him, and not by motion

for a rule, or the court will discharge it.

(m) On an ejectment against a landlord, or those claiming under him, on Cases under a supposed defect of title, the court will not allow a lessee to defend alone.

—Driver d. Oxenden v. Lawrence, 2 W. Black. 1259. The landlord's title must not be inconsistent with the possession of the tenant, or the rule will be discharged.—Doe d. Harwood v. Lippencot, Ad. Ejest. 230; and see Doe d. Horton v. Rhys, 2 Y. & I. 88. A devisee not having been in possession will not be permitted to be made defendant, instead of the tenant, as landlord.—Lovelock d. Norris v. Dancaster, 3 T. R. 783. But they will permit the heir at law or remainder man claiming under the same title.—

Id. Or a devisee in trust.—4 T. R. 122. Doe d. Eblethwaite v. Roe, 3 T. R. 783, n. So the court permitted a mortgagee to be made defendant with the mortgagor.—Doe d. Telyard v. Cooper, 8 T. R. 645. But the court will not allow a tenant in possession to defend an ejectment brought by a mortgagee to come at the rent.—Lofft. 364. Nor a mortgagee to come in and defend as landlord, unless he be interested in the result of the suit.—Doe d. Pearson v. Roe, 6 Bing. 613. 4 M. & P. 437. Where the attorney of landlord and tenant neglected to enter an appearance, having received instructions so to do, the court set aside a regular interlocutory judgment and writ of possession executed on an affidavit by the attorney, showing matters personally affecting himself which had prevented his attending to it.—Doe d. Shaw v. Roe, 13 Price, 260. Such affidavit stating that the deponent believed the defendant had a good defence to the action, without stating "on the merits."—Id. A landlord defraying the costs of defending an ejectment in the name of an illiterate tenant, who signed a retraxit and cognovit in the action, was allowed to defend as landlord, and the instrument was set aside.—Doe d. Locke v. Franklyn, 7 Taunt. 9. 1 Chit. 390, a. Where a party has with others been made a defendant, but is not in possession, his name will be struck out on motion, he undertaking to permit execution for any premises of which he might be possessed.—Doe d. Snape v. Snape, 2 Tyr. 340. 3 C. & I. 214. 1 Dowl. P. C. 314.

By 1 G. IV., c. 87, s. 1,(o) where the term or 1 G. IV., c. interest of any tenant holding under a lease or agreement any lands, tenements, or hereditaments for any term or number of years certain, or from year to year, shall have expired or been determined, either by the landlord or tenant by regular notice to quit: and such tenant, or any one holding or claiming by or under him, shall refuse to deliver up possession accordingly, after lawful demand in writing made and signed(p) by the landlord or his agent, and served personally upon or left at the dwelling house or usual place of abode of such tenant or person; and the landlord shall thereupon proceed by action of ejectment for the recovery of possession; he may, at the foot of the declaration, address a notice to such tenant or person, requiring him to appear on the first day of the term next following, to be made defendant, and

the statute 1 G. IV.

(o) This statute only applies to cases where the tenancy is under lease, cided under was if the tenanty of time, or under an agreement from year to year, if the tenancy has been determined by a regular notice to quit.—Doe d. Tindall v. Roe, I Dowl. P. C. 143. 2 B. & Adol. 922. But it does not apply to the case of a lessee holding over after notice to quit given by himself, where his tenancy has not expired by efflux of time.—Doe d. Cardigan v. Roe, 1 D. & R. 540. Nor does it extend to a tenant from year to year, without a lease or agreement in writing.—Doe d. Bradford v. Roe, 3 B. & A. 776. An agreement in writing for apartments for three months certain, comes within the statute.— Doe d. Phillips v. Roe, 1 D. & R. 433. 5 B. & A. 766. A tenuncy for years determinable on lives is not within the statute.—Doe d. Pemberton v. Roe, 1 B. & C. 2. In ejectment by landlord against tenant, if the title to the premises be disputed between them, the latter is not compelled to give the undertaking, and enter into the recognizances required by the statute.—Doe d. Sanders v. Roe, 1 Dowl. P. C. 4.

Notice of demand of possession.

THE FORM OF DEMAND IS AS POLLOWS:-

"I do hereby, (or if by agent say, 'As agent for Mr. A.B., your landlord, and on his behalf,') according to the statute in that behalf, demand and reand on his behalf, according to the statute in that behalf, demand and require you immediately to give and deliver up to me (or the said A. B.) possession of the dwelling house (lands) and premises, with the appurtenances, situate in the parish of, &c., in the county of, &c., which you held as tenant thereof, [if the tenancy expired by a notice to quit, say, 'As tenant thereof from year to year, under and by virtue of an agreement in writing dated, &c., and which tenancy of and in the same has been determined by a notice to quit, given to (or by) you in that behalf,'] under and by virtue of a lease bearing date, &c., [by him,] to you made in that behalf, your term therein having expired. Dated," &c.

[or E.F., agent for the said A. B.] (This demand must be served personally upon, or be left at the dwelling-house or certain place of abode of, such tenant, or person holding or claiming by or under him.)

to find bail if ordered by the court; and upon appearance, or in case of non-appearance or making the usual affidavit of service, the landlord producing the lease or agreement, or some counterpart or duplicate thereof, and proving the execution by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired or been determined by regular notice to quit, as the case may be, and that possession has been lawfully demanded in manner aforesaid, may move the court for a rule for such tenant or person to show cause, within a time to be fixed by the court on a consideration of the situation of the premises, why such tenant or person, upon being admitted defendant, besides entering into the common consent rule should not undertake, in case a verdict should pass for the plaintiff, to give him a judgment to be entered up against the real defendant of the term next preceding the trial: and also why he should not enter into a recognizance by himself and two sufficient sureties in a reasonable sum, conditioned to pay the costs and damages recovered by the plaintiff in the action; and the court, on cause shown or affidavit of service, may make the rule absolute in the whole or in part, and order such tenant or person within a time fixed to give such undertakings, and find such bail, with such conditions, and in such manner as shall be specified in the rule, or such part of the same so made absolute; and if the party shall neglect or refuse so to do, and shall lay no ground to induce the court to enlarge the time for obeying the same, then, upon affidavit of the service of the order, an absolute rule may be made for entering up judgment for the plaintiff.

By s. 2, whenever it shall appear on the trial of section 2. any ejectment at the suit of a landlord against a tenant, that such tenant or his attorney hath been served with due notice of trial, the plaintiff shall not be nonsuited for default of the defendant's ap-

pearance, or of confession of lease, entry, and ouster; but the production of the consent rule, and undertaking of the defendant, shall, in all cases, be sufficient evidence of lease, entry, and ouster, and the judge shall, whether the defendant shall appear upon such trial or not, permit the plaintiff on the trial, after proof of his right to recover possession of the whole, or of any part of the premises, to go into evidence of the mesne profits thereof, which shall or might have accrued from the day of the expiration or determination of the tenant's interest in the same, down to the time of the verdict given in the cause, or to some preceeding day to be specially mentioned therein; and the jury on the trial finding for the plaintiff, shall, in such case, give their verdict upon the whole matter, both as to the recovery of the whole or any part of the premises, and also as to the amount of the damages to be paid for such mesne profits; provided always, that nothing is to bar such landlord from bringing an action of trespass for the mesne profits which shall accrue from the verdict, or the day so specified therein, down to the day of the delivery of possession of the premises recovered.

Section 3.

And by section 3, in cases of trials after undertakings given, and bail found under the statute, if a verdict shall pass for the plaintiff, but the judge shall think the finding contrary to evidence, or the damages excessive, he may order execution to be stayed absolutely, till the fifth day of the following term; and in all other cases, he is to make such an order upon the requisition of the defendant, in case he shall forthwith undertake to find, and within four days from the day of trial shall actually find security by the recognizance of himself and two sufficient sureties, in such reasonable sum as the judge shall direct, conditioned not to commit waste, or act in the nature of waste, or other wilful damage, and not to sell or carry off any standing crops, hay, straw, or manure, produced or made (if any) upon the premises, and which may happen to

be thereupon, from the day of verdict given to the day of execution, finally made or set aside as the case may be; but such recognizance to be discharged and of no effect in case of bail being given on error.

And by section 4, the recognizances are to be section 4. taken in the same manner as other recognizances Recognizof bail; and actions on them are limited to six ances. months from the time possession of the premises, or any part thereof, is actually delivered to the landlord.(q)

By 11 G. IV., and 1 W. IV., c. 70, s. 36, reciting 11 G. IV., & "that landlords to whom a right of entry into or 1 W. IV., a. upon any lands or hereditaments may accrue during or immediately after Hilary and Trinity terms respectively, were unable to prosecute ejectments against their tenants so as to try the same at the assizes immediately ensuing, whereby much delay was occasioned in the recovery of the possession of lands and tenements wrongfully withheld by tenants against their landlords," it is enacted, that in all ejectments brought in any of the courts at Westminster, by any landlord against his tenant, or

(q) Under this statute, instead of moving for judgment in the ordinary way, the lessor should be prepared with the affidavits required by the under the statute, (See affidavits, p. 24.) in addition to the usual affidavit of service, and the motion should be for a rule to show cause why the party should IV., and I not undertake, upon being admitted defendant, besides entering into the w. IV. common rule, and giving the common undertaking, to give the plaintiff judgment in case he obtains a verdict of the term next preceding the trial, and why he should not enter into a recognizence by himself and two entering of the common undertaking. and why he should not enter into a recognizance by himself and two suffi-cient sureties, in the sum to be named by the court, to pay the costs and damages which may be recovered in the action.

A demand of possession under this statute is sufficient notice so as to Cases. entitle the plaintiff to the benefit of the undertaking, and security required.—Doe d. Anglesea (Marquis) v. Roe, D. & R. 565. And the time which the undertaking and security requires is to be fixed by the court at the time the rule is granted.—Doe d. Anglesea v. Brown, 2 D. & R. 688. The rule nisi need not specify all the particulars thereby required, as the ourt may move the rule conformably to the statute in showing cause.—
Doe d. Phillips v. Roe, 1 D. & R. 433. 5 B. & A. 766. It may be made part of the rule that the landlord shall be at liberty to sign judgment against the casual ejector, in case of a default on the part of the tenant to give the required securities.—Doe v. Roe, 2 Dowl. P. C. 180. When the lessor, in answer to a motion grounded upon the usual affidavits, alleges a re-taking, it requires particularity and precision.—Roe d. Durant v. Doe, 6 Bing. 574. 4 M. & P. 391. On bringing error the defendant must give two additional securities, although he has before given the two suregive two additional securities, although he has before given the two sureties required when the action was commenced against him.—Ros d. Durant v. Moore, 7 Bing. 124. 4 M. & P. 761. 1 Dowl. P. C. 203.

against any person claiming through or under such tenant, for the recovery of any lands or hereditaments where the tenancy shall expire, or the right of entry into or upon such lands or hereditaments shall accrue to such landlord in or after Hilary or Trinity terms respectively, the lessor of the plaintiff in such action may, at any time within ten days after such tenancy shall expire, or right of entry accrue, as aforesaid, serve a declaration in ejectment, intituled of the day next after the day of the demise in such declaration, whether the same shall be in term or in vacation, with a notice thereunder subscribed, requiring the tenant or tenants in possession to appear and plead thereto within ten days, in the court in which such action may be brought; and proceedings shall be had in such declaration, and rules to plead entered and given in such and the same manner as nearly as may be, as if such declaration had been duly served before the preceeding term, provided that no judgment shall be signed against the casual ejector until default of appearance and plea within such ten days; and that at least six clear days' notice of trial shall be given to the defendant before the commission day of the assizes at which such ejectment is intended to be tried; provided also, that any defendant in such action may, at any time before the trial thereof, apply to a judge of either of the superior courts at Westminster, by summons, in the usual manner, for time to plead, or for staying or setting aside the proceedings, or for postponing the trial until the next assizes, and that the judge in his discretion may make such order in the said cause as to him shall seem expedient. And by section 37, in making up the record of the proceedings on any such declaration in ejectment, the declaration is to be intituled specially as above mentioned. (r) And

⁽r) This statute does not apply in cases in which the title accrues in Michaelmas or Easter term; it applies to issuable terms only.—Doe v. Roe, I Dowl. P. C. 304. 2 C. & I. 123. Where a landlord's right accrues during Hilary term, and the premises are situate in Middlesex, proceedings cannot be had for their recovery under the statute.—Doe d. Norris v. Roe,

by section 38, in all cases of trials of ejectment at nisi prius, where a verdict shall be given for the plaintiff, or he shall be non-suited for want of the defendant's appearance to confess lease, entry, or ouster, the judge before whom the cause shall or may be tried may certify his opinion on the back of the record, that a writ of possession ought to issue immediately; and upon such certificate a writ of possession may be issued forthwith, and the costs may be taxed, and judgment signed and executed afterwards, at the usual time; but it is provided that such writ, instead of reciting a recovery by judgment in the usual form, is to recite shortly that the cause came on for trial at nisi prius, at such a time and place, and before such a judge, (naming the time, place, and judge,) and that thereupon the said judge certified his opinion that a writ of possession ought to issue immediately.(s)

1 Dowl. P. C. 547. A landlord is not entitled to serve a declaration in ejectment, as of Trinity term when his right accrues after the essoign day of that term, under the statute.—Doe v. Roe, I Dowl. P. C. 79. It is no objection to a declaration in ejectment not brought by a landlord against his tenant, that the notice directed by the statute is subscribed, provided it is served before the proper day.—I Dowl. P. C. 18. This section does not apply to the case of a tenancy under an agreement exsection does not apply to the case of a tenancy under an agreement expiring the day before the first day of term.—Doe d. Somerville v. Roe, 4 M. & Scott, 747.

(s) Under this section of the statute, if a lessor of the plaintiff is non-Certificate. suited for want of the defendant's confessing lease, entry, and ouster, the judge will not grant a certificate unless au affidavit, stating the circumstances of the case, be laid before him.—Doe d. Williamson v. Dawson, 4 C. & P. 589. The judge must either grant a certificate for immediate possession, or let the case take its regular course.—Id. But if the judge should think that some time ought to be allowed to the defendant, he will

grant a certificate for immediate possession, the plaintiff undertaking not to enforce it for a certain time.—Doe d. Packer v. Hilliard, 5 C. & P. 132.

(See the provisions of the statute 1 W. IV., c. 7, s. 2, which extends to all actions whatsoever, so that the presiding judge in trials of ejectment 7, s. 2. has the power of certifying either under the statute 11 G. IV., and 1 W. IV., c. 70, s. 38, or the statute 1 W. IV., c. 7, s. 2.)

FORMS OF DECLARATION IN EJECT-MENT.

(1.)

Declaration in Ejectment on single Demise.

In the Queen's Bench, (C. P., or Exch.)

Trinity term,(t) in the second year of the reign of Queen Victoria.

- SHIRE. (u)

To wir, Richard Roe was attached to answer John Doe in a plea of trespass and ejectment, and thereupon the said John Doe, by Richard Safe, his attorney, complains THAT WHEREAS Andrew Blowman, on the ——day of, &c., in the first year of the reign of our lady the now queen, at the parish of W., in the county of L., had demised(v) to the

Entitling

Demise.

(t) The declaration should be entitled of the term immediately preceding the vacation in which it is delivered; but this appears not to be very material if sufficient notice be given to the tenant to appear to the action; indeed, if no term be mentioned, the declaration will be good if cordeclaration. rect in the other particulars.—See Goodtitle d. Ranger v. Roe; and see Dos d. Greaves, 2 Chitt. 172; and 2 Chitt. 173. A declaration intituled 6 W. IV., instead of 5 W. IV., was held sufficient to warrant a rule for judgment against the casual ejector.—Doe d. Smithers v. Roe, 4 Dowl. P. C. 374. The statement of a term not yet arrived, intituling a declaration in ejectment is immaterial, if the proper information as to time of appearing is given in the notice.—Doe d. Gore v. Ross, 3 Dowl. P. C. 5. Neither the uniformity process act of 2 W. IV., c. 39, nor the rule 15 of M. T., 3 Wm. IV., is applicable to declarations in ejectment, but only to personal actions.—Doe d. Gillett v. Roe, 4 Tyr. 649. 1 C. M. & R. 19. 2 Dowl. P. C. 690. Doe d. Evans v. Roe, 1 Adol. & Ellis, 11.

Venue.

(u) The venue is confined to the county in which the lands are situated. But the venue is immaterial if it be correct in the body of the declara-

Demise in the declaration.

tion.—Doe d. Goodwin v. Roe, 3 Dowl. P. C. 323.

(v) The demise is fictitious, but it must be consistent with the title of the lessor of the plaintiff; it must be such demise as if actually made would have transferred the right of possession to the lessee; for instance, upon a joint demise alleged by several lessors, it must be shown at the trial each of them was enabled to demise the whole.—See King r. Berry, Poph. 57; and see 6 Co. 75. Id. Joint tenants or parceners may make a joint demise, or several demises; but tenants in common must allege separate demises; but each demise generally of the whole premises, and not a share, as a part may be recovered thereby.—Doe d. Bryant v. Wippel, 1 Esp. 360. (See Precedent 2, for double demise.) Joint tenants or parceners having a joint possession by one and the same title, must join in an action for an injury thereto, and may be said, therefore, to demise the whole.—Millener v. Robinson, Moore, 682. Heatherly d. Worthington v. Weston, 2 Wils. 232. (See pp. 13 and 14, estates, joint tenancy.) The date of demise must be subsequent to the time of plaintiff's right said John Doe, three messuages, three cottages, three barns, three stables, three outhouses, three yards, three gardens, three orchards, three acres of arable land, three acres of pasture land, three acres of land covered with water, and three acres of other land, (w) with the appurtenances, situate and being in the parish (x) aforesaid, in the county aforesaid; TO HAVE AND TO HOLD the same to the said John Doe, and his assigns, from the —— day of, &c., for, and during, and unto, the full end and term of seven years(y) from thence next ensuing, and fully to be complete and ended, by virtue of which Plaintiff's said demise the said John Doe entered into the said tenements, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted; and the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the —— day of, &c., in the —— year Nominal defendant's aforesaid, (or say, "on the same day and year afore-ouster. said,") with force and arms, &c., entered into the said tenements, with the appurtenances, which the said Andrew Blowman had demised to the said John Doe, in manner and for the term aforesaid, which is not yet expired, and ejected the said John Doe from his said farm, and other wrongs to the said John Doe, then and there did to the great damage of the said John Doe, and against the peace of our said lady the queen, wherefore the said John Doe saith that he is injured and hath sus-

accruing; but should be laid as far back as the lessor's title will admit, in Messuages regard to the recovery of mesne profits. It is usual to state several demises in demise. in case of doubt. (See Precedent 2, for double demise, p. 377.)

(w) It is immaterial as to the number of messuages mentioned in the place where demise; but care must be taken that the number specified be larger than situate. **the number claimed.**

(x) The omission of the parish is not material, if the place where situate As to omisis mentioned; and even if the name of the place can be collected from sions. other parts of the declaration, the description will be held good.—Good. right d. Smallwood v. Strother, Black. 706. But where the parish is mentioned, it ought to be correct; and if in two parishes, such as A. and B., it must not be stated, "or one of them."—Goodwin v. Blackman, 3 Lev. 334. But it may be thus: "In the parishes of A. and B., or in A. and B. respectively.—2 Chitt. Prec. 325.

(y) The term declared upon is generally seven years; the land must be Term. recovered before its expiration; the courts will permit lessor to amend in this respect.

Suit.

tained damage to the value of fifty pounds, and therefore he brings suit, &c.

Mr. T. B. (C. D., and E. F.)(z)

Notice.

I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned, or some part thereof; and I, being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear in the next Easter term, (a) in her majesty's court of Queen's Bench, (C. P., or Exch.,) at Westminster,(b) by some attorney of that court, and then and there, by rule of the same court, to cause yourself (or yourselves) to be made defendant (or defendants) in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession. Yours, &c.

Richard Roe.

(c)

Name of tenant in possession. (z) The name of the tenant in possession must be prefixed to the notice; the omission of the Christian name is insufficient.— Doe v. Roe, 1 Chit. 573. But the second name, of the tenant in possession, both in the declaration and notice, may be in initials.—Id. Where the notice to the declaration contains the names of many tenants, it is sufficient that the copy served on each should contain the name of that one only.—Doe d. Field v. Roe, 1 Har. & Woll. 516.

Notice to declaration.

(a) The notice usually specifies the term by name, being the subsequent one to the term in which the declaration is entitled; but where a declaration was duly served before the essoign day, the omission in the notice of the term, in which the tenant was to appear, was immaterial.— Doev. Roe, I Tyr. 280. 1 C. & I. 330. But merely in the notice, advising the tenant to appear and defend in due time, is insufficient.—Doe d. Isherwood v. Roe, 2 Nev. & M. 476; and see Doe d. Forbes v. Roe, 2 Dowl. P. C. 420. The omission of that part of the notice which states, the consequence of the omission of that part of the notice which states, the consequence of the action not being defended, will be the turning the tenant out of possession, makes it defective.—Doe d. Darment v. Roe, 3 Dowl. P. C. 336. If in London or Middlesex say, "on the first day of next —— term;" but in the country, it should be of the next term generally.—See rule E. T. 2 G. IV. In a country ejectment the notice may be to appear in the next issuable term, and judgment against the casual ejector may be moved for in that term.—Doe d. Clarke v. Roe, 1 Taunt. 738.

(b) If in the Queen's Rench, the omission of "wheresoever her said majesty shall then be," &c., usually put in originals, is immaterial.—Doe d. Thomas v. Roe, 2 Chitt. 171.

(c) There is no necessity for any date under the name of the casual

(c) There is no necessity for any date under the name of the casual ejector, and in all cases had better be omitted.

(2.)

Declaration in Ejectment on double Demise.

In the Q. B. (C. P., or Exch.)

- term in the second year of the reign of Queen Victoria. SHIRE.

To wir, Richard Roe was attached to answer John Doe in a plea of trespass and ejectment, and thereupon the said John Doe, by R. S., his attorney, complains THAT WHEREAS Andrew Blowman, on First count the —— day of, &c., in the first year of the reign of or demise. our lady the now queen, at the parish of —, in the county of S., had demised to the said John Doe, three messuages, &c., (state the parcels,) with the appurtenances, situate and being in the parish aforesaid, in the county aforesaid; TO HAVE AND TO HOLD the same to the said John Doe, and his assigns, from the —— day of, &c., for, and during, and unto, the full end and term of fourteen years from thence next ensuing, and fully to be complete and ended; and also, that (d) whereas Second Benjamin Bonner, on the said —— day of, &c., in mise. the — year aforesaid, at the parish aforesaid, in the county aforesaid, had demised to the said John Doe three other, &c., (state the parcels again,) with the appurtenances, situate and being in the parish aforesaid, in the county aforesaid; TO HAVE AND TO HOLD the same to the said John Doe, and his assigns, from the said —— day of, &c.,(e) for, and during, and unto, the full end and term of fourteen years from thence next ensuing, and fully to be complete and ended; by virtue of which said several Plaintiff's demises the said John Doe entered into the said entry. several tenements, first and secondly above mentioned, with the appurtenances, and became and was thereof possessed for the said several terms so to him thereof respectively granted; and the said Nominal de-

⁽d) See notes to form No. 1.
(e) A double demise may be inserted on different dates by either of the lessors of plaintiff, or either of them.—See note to precedent No. 1, p. 374. Other demises may be inserted by parties requisite, in the same form as above.

fendant's ouster.

John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the —— day of, &c., in the — year aforesaid, with force and arms. &c., entered into the said several tenements, first and secondly above mentioned, with the appurtenances, which the said Andrew Blowman and Benjamin Bonner had respectively demised to the said John Doe, in manner and for the said several terms aforesaid, which are not yet expired and ejected, the said John Doe, from his said several farms, (f) and other wrongs to the said John Doe, then and there did to the great damage of the said John Doe, and against the peace of our said lady the queen, wherefore the said John Doe saith that he is injured, and hath sustained damage to the value of fifty pounds, and, therefore, he brings suit, &c.

Suit.

Mr. Thomas Andrews,

Notice.

I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned, or some part thereof; and I, being sued in this action as a casual ejector only. and having no claim or title to the same, do advise you to appear in next —— term, in her majesty's court of, &c., by some attorney of that court, and then and there, by rule of the same court, to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession.(q) Yours. &c.

Richard Roe.

(f) If the declaration is intended to contain several distinct ousters, the distinct demises, entry, and ouster, may follow here.

Proceedings

(g) In the proceedings on a vacant possession, the declaration in such proceedings on a vacant possession, the declaration in such case is the same as in other cases, except that the plaintiff and defendant, and lessor of the plaintiff are named; and instead of the usual notice to appear, it will be as follows: "Take notice, that unless you appear in her majesty's court of, &c., at Westminster, within the first four days [or if in the country, "within the first eight days"] of next—term, at the suit of the above named plaintiff, A. B., and plead to this declaration in ejectment, judgment will be thereupon entered against you by default.

Dated,"

Pours, &c.

To Mr. T. A. (the tenant).

R. S., plaintiff's attorney.

(N.B.—For the letter of attorney to enter and seal lease, &c., and the afidavit of the execution thereof, and also for the form of the lease, as to a vacant possession, see the respective heads for the sume.)

(3.)

Declaration in Ejectment under the Statute 1 G. IV., c. 87. (See p. 368.)

In the Q. B. (C. P. or Exch.)

--- term in the second year of the reign of Queen Victoria. SHIRE.

To wir, Richard Roe was attached to answer John Doe, in a plea of trespass and ejectment, and thereupon the said John Doe, by R.S., his attorney, complains, THAT WHEREAS, Andrew Blowman, on Demise. the — day of, &c., in the first year of the reign of our said lady the queen, at the parish of, &c., in the county of, &c., had demised to the said John Doe, (parcels,) with the appurtenances, situate and being in the parish aforesaid, in the county aforesaid, TO HAVE AND TO HOLD the same to the said John Doe and his assigns, from the —— day of, &c., for and during, and unto the full end and term of seven years from thence next ensuing, and fully to be complete and ended. By virtue of which Entry. said demise the said John Doe entered into the said tenements, with the appurtenances, and became, and was thereof possessed for the said term, so to him thereof granted. And the said John Doe, Nominal being so thereof possessed, the said Richard Roe ouster. afterwards, to wit, on the ---- day of, &c., in theyear aforesaid, with force and arms, &c., entered into the said tenements, with the appurtenances, which the said Andrew Blowman had demised to the said John Doe, in manner and for the term aforesaid, which is not yet expired, and ejected the said John Doe from his said farm, and other wrongs to the said John Doe, then and there did to the great damage of the said John Doe, and against the peace of our said lady the queen. Wherefore the said John Doe saith, that he is injured and hath sustained damage to the value of fifty pounds. And Suit. therefore he brings suit, &c.(h)

(A) First may be added the ordinary notice as in p. 376, signed by the easual ejector, and then the notice under the statute to follow.—See 1

4

der statute 1 G. 4, c. 87. See p. 368. To be signed lord himself, or by his attorney or agent.

Notice un- To Mr. Thomas Andrews,

You are hereby, according to the form of the statute in such case made and provided, reby the land-quired to appear to the above declaration in ejectment, on the first day of next — term, (or in country cases, "in next --- term,") in her majesty's court of Queen's Bench, (or C. P., or in the office of Pleas of her Majesty's court of Exchequer,) at Westminster, there to be made defendant instead of the casual ejector, Richard Roe; and by yourself and two sufficient sureties, to enter into a recognizance if ordered by the said court, in such amount and for such purposes as are specified in and by an act of parliament, made and passed in the first year of the reign of King George the Fourth, entitled, "An act for enabling landlords more speedily to recover possession of lands and tenements unlawfully held over by tenants." Dated, &c.

Andrew Blowman,

Lessor of the plaintiff, and landlord of the premises mentioned in the above declaration, (or R. S., attorney for the said A. B.).

(4.)

Declaration in Ejectment under the Statute 1 Wm. IV., c. 70. (See p. 371.)

In the Q. B. (C. P. or Exch.)

Date.

The ——(i) day of, &c., in the year of our Lord, 1838.

To wir, Richard Roe was attached to answer - SHIRE. John Doe in a plea of trespass and ejectment, and thereupon the said John Doe, by R.S., his attorney.

> Dow. & Ry. 435. And which last notice should be signed by the landlord himself, in order to give him the benefit of the statute.—Id. 435, m. (But if the notice be signed, "A. B., agent for the plaintiff, is sufficient."—Beard v. Roe, 1 Mees. & Wels. 360; and see same case as to the form of this notice.) Bayley, J., said the reason for the two notices being added was, that very probably many persons would not read through the notice, and would not, therefore, be aware that anything more was required than in an ordinary case of service of the declaration upon the tenant in posses-

> (i) This date should be the day next after that on which the demise is laid in the declaration.

complains, THAT WHEREAS, Andrew Blowman, on Demise. the ——(j) day of, &c., in the year of our Lord, 1838, at the parish of, &c., in the county of, &c., had demised to the said John Doe, (parcels,) with the appurtenances, situate and being in the parish aforesaid, in the county aforesaid, TO HAVE AND TO HOLD the same to the said John Doe and his assigns, from the —— day of, &c., then last past, for and during, and unto the full end and term of seven years from thence next ensuing, and fully to be complete and ended. (k) By virtue of which said de-Entry. mise the said John Doe entered into the said tenements, with the appurtenances, and became and was possessed thereof, for the said term, so to him thereof granted; and the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the —— day of, &c., in the —— year aforesaid, with force and arms, &c., entered into the said tenements, with the appurtenances, which the said Andrew Blowman had demised to the said John Doe, in manner and for the term aforesaid, which is not yet expired, and ejected the said John Doe from his said farm, and other wrongs to the said John Doe, then and there did, against the peace of our said lady the queen, and to the damage of the said John Doe, of fifty pounds. And therefore, &c.

Mr. Thomas Andrews,

I am informed that you are in possession of, der G. I. w. or claim title to, the premises in this declaration IV. c. 70. of ejectment mentioned, or some part thereof; and I being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear within ten days from the service hereof on you, in her majesty's court of Queen's Bench, (C.P. or Exch.)(l) at Westminster, and plead to the said declaration by some attorney

⁽j) This date should be any day after the expiration of the tenancy, or right of entry accruing.

⁽k) If on double demises see No. 2, p 377.

(l) If in the Exchequer say, "In the office of Pleas in her majesty's court of Exchequer of Pleas." (The body of the declaration is the same as in ordinary cases.)

of that court; and then and there by rule of the same court, to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession.

Yours, &c.,

Richard Roe.

(5.)

Declaration in Ejectment on a vacant Possession.(m)

In the Q. B. (C. P. or Exch.)

Term.

Trinity Term, in the second year of the reign of Queen Victoria.

— SHIRE.

Demise.

To WIT, J. K. was attached to answer A.B., in a plea of trespass and ejectment, and thereupon the said J. K., by R. S., his attorney, complains, THAT WHEREAS, G. H., on the —— day of, &c., in the - year of the reign of our lady the now queen, at the parish of, &c., in the county of, &c., had demised to the said J. K., two messuages, two cottages, two barns, two stables, two outhouses, two yards, two gardens, two orchards, fifty arces of arable land, fifty acres of meadow land, fifty acres of pasture land, fifty acres of land covered with water, and fifty acres of other land, with the appurtenances, situate and being in the parish aforesaid, in the county aforesaid, TO HAVE AND TO HOLD the same to the said A. B., and his assigns thenceforth, for and during, and unto the full end and term of, seven years from thence next ensuing, and fully to be By virtue of which said complete and ended. demise the said A. B. entered into the said tenements, with the appurtenances, and became and was thereof possessed for the said term, so to him

Entry.

Form of declaration.

(m) This declaration is the same as form No. 1, except that instead of a. "John Doe," the name of the real lessee, A. B., is inserted; and instead of the name "Richard Roe," the person who has ejected the plaintiff is inserted. In this case of vacant possession the old method must be pursued, except in the single instance provided for by statute 4 G. II., between landlord and tenant.—See note (n).

thereof granted. And the said A. B., being so Ouster. thereof possessed, the said J.K. afterwards, to wit, on the day and year aforesaid, with force and arms, &c., entered into the said tenements above mentioned, with the appurtenances, which the said A. B. was so interested, in manner and for the term aforesaid, which is not yet expired, and ejected the said A. B. from his said farm, and other wrongs to the said A.B., then and there did, to the great damage of the said A. B., and against the peace of our said lady the queen. Wherefore the said A. B. saith, that he is injured and hath sustained damage to the amount of fifty pounds. And therefore he brings suit, &c.

Mr. J. K.,

Notice.

Take notice, (n) that unless you appear within the first eight days of the next --- term, in her majesty's court of Queen's Bench, (C. P., or Exch.,) at Westminster, at the suit of the above-named plaintiff, A.B., and plead to this declaration in ejectment, judgment will be thereupon entered against you by default.

Yours, &c., R. S., Plaintiff's Attorney.

(n) The above form of notice to appear and plead is required to be sub- Application joined to the above form, which is adopted where there is no actual tenant of the mode or occupier of the lands, (except in the case of landlord and tenant, where of proceed-the landlord has a right of re-entry as upon a lease where half a year's ing-rent is left unpaid). The mode of proceeding is by sealing a lease on the premises, and it is first necessary that the claimant do take possession of the lauds by making a formal entry thereon to empower him to constitute alessee for years; and being in possession of the soil, he there on the land seals and delivers a lease for years to such lessee, and having thus given him entry, leaves him in possession of the premises. This lessee is to stay upon the land till the prior tenant, or he who had the previous possession, enters thereon afresh, and ousts him, or till some other person (either by accident or agreement before hand) comes upon the land and turns him out or ejects him. For this injury the lessee is entitled to his action of ejectment against the tenant, or the casual ejector, whichever it was that ousted him, to recover back his term, and damages.—(See form of Affidavit, p. 25.) If the landlord, or person claiming title, does not wish to enter himself and seal the lease, he may do so by attorney, and the proceedings are just the same, the attorney acting as the principal landlord.

AS TO SERVICE OF DECLARATION IN EJECT-MENT. (See forms of Affidavits, p. 22.)

Service of declaration when on several tenants.

SERVICE upon the party at his house is good, although the premises were in another county.(0) In ejectments for premises demised on lease to one person, who has underlet to others, it is necessary to serve all the undertenants with a copy of the declaration.(p) Service on one of two several tenants in possession is good service on both; (q) but not unless the affidavit shows that they are both in possession.(r) Service on one of two tenants in possession, with another service on that tenant for the other, and an explanation given, is not good.(s) Personal service on one of two joint-tenants is sufficient, (t) if such joint-tenancy appear on the affidavit of service. (u)

Joint tenants.

Service on two joint tenants, who were also copartners in trade, is not sufficient to entitle the plaintiffs to judgment against the casual ejector in the first instance, but there must be a rule to show cause. (v) And the court granted a rule nisi only, where the service was on one of three tenants in possession, and the affidavits did not state them to be joint tenants.(m)

On one of several defondants.

But although service on one of several defendants is not sufficient, judgment may be obtained against the one served. (x) The statute 48 G. III., required an office copy of the declaration to be

(p) Doe d. Darlington (Lord) v. Cock, 4 B. & C. 259.
(q) Doe d. Bailey v. Roe, 1 B. & P. 369.
(r) Doe d. Bromley v. Roe, 1 Chit. 141.
(s) Doe d. Elwood v. Roe, 3 Moore, 578.
(t) Doe d. Williamson, v. Roe. 10 Moore, 493; S. P. 1 Chit. 121. Loft. 301.

(n) Doe d. Gaskell v. Roe. 3 Tyr. 84. (v) Doe d. Field v. Roe. 2 Chit. 174: 8. P. 2 Chit. 176.

(w) 2 Chit. 175. (x) Doe d. Murphy v. Moore, 2 Chit. 176.

written in the usual and accustomed manner, on which a duty of fourpence per sheet was imposed; but it had not been the practice to write such copies on both sides of the paper. Held, that the service of seventeen office copies of declaration in ejectment, so written and delivered to as many tenants in pos-

session, was irregular. (y)

Service on an under joint tenant is good service Joint teon him and a joint tenant. (z) Where three sisters lived together, and there was service of a declaration in ejectment on one of them by delivery to the other two the day before the term commenced, the court granted a rule nisi for judgment against the casual ejector. (a)

Service on the wife of the tenant in possession is When the good; (b) and it may be served on the wife either on declaration the premises, or at the husband's house or else-is on the wife. where.(c) Service on the wife of the tenant in possession, without stating that it was served at the husband's house or on the premises, is insufficient to support a rule for judgment against the casual ejector.(d) Where the service is on the wife on the premises it is sufficient, though it be not shown that the husband and wife were living together. (e)But if the service be not made on the premises it is not sufficient, unless it is stated that she was living with her husband (f)

It was at one time thought, that if the service was At dwelling made at the husband's dwelling house, though off house. the premises, it was not necessary to show that the wife was living with him.(g) Service on the wife in a shed, where the husband carried on his business,

⁽y) Doe d. Irwin v. Roe. 1 D. & R. 562.
(z) Doe d. Hutchinson c. Roe. 2 Dowl. P. C. 418.

⁽²⁾ Doe d. Hukhinson v. Roe. 2 Dowl. P. C. 418,
(a) Doe d. Grimes v. Roe. 4 Dowl. P. C. 86,591. 1 Har. & Woll. 369.
(b) Goodright d. Waddington v. Thrustout. 2 W. B. 800.
(c) Doe d. Moreland v. Bayliss. 6 T. R. 765. S. P. Doe d. Wingfield v. Roe. 1 Dowl. P. C. 693. Oates d. Chatterton v. Coates. 6 T. R. 765.

n., and see Doe d. Baddams v. Roe. 2 B. & P. 55.
(d) Right D. d. Bomsall v. Wrong. 2 D. & R. 84.
(e) 1 Chit 499. A Tannt 890.

⁽e) 1 Chit. 499. 4 Taunt. 820.

⁽f) Doe d. Williams v. Roe. 2 Dowl. P. C. 89 S. P. Doe d. Briggs v. Roe, 1 Dowl. P. C. 312. 2 C. & J. 202. 2 Tyr. 211. S. P. Jenny d. Preston v. Cutts, 1 N. R. 308.

is a good service, although not forming part of the premises sought to be recovered, but closely ad-

joining them. (h)

At the shop.

Acknow-

wife.

ledgment by

Service was held sufficient where the declaration was left in the shop where the wife of the tenant in possession was, who refused to hear the notice read, and went out and shut the door after her.(i) Service on a woman upon the premises who represented herself to be the wife of the tenant in possession was held sufficient.(j) But service on a woman representing herself to be the wife, not stating deponent's belief that she was so, was held insufficient. (k) The mere acknowledgment of the wife of the tenant in possession, that she had received a declaration in ejectment, will not bind the husband.(1)

Explanation was nailed upon the door.

A declaration and notice in ejectment having to wife when been nailed upon the door of the premises, the tenant's wife called upon the person who attempted to serve the ejectment, and requested to know what she was to do with the paper; he explained it to her, and recommended her to go to the plaintiff's attorney; she replied, she would see her husband immediately, and recommend him to do so; held that this was not a good service.(m)

Service on wife when Christian nant is not stated, and conduct of wife.

Service in ejectment on the wife of the tenant in possession on the premises is sufficient, although name of te-from the conduct of the tenant and his wife his Christian name is not stated in the notice at the foot of the declaration.(n) Where there was a service of a declaration in ejectment on the wife of the brother of the tenant on the premises, who afterwards said she should go and see the tenant, and she next day left the premises, the court granted a rule nisi for wife's declar judgment against the casual ejector. (o) The court will not allow a wife's declaration, with respect to

ration.

- (A) Doe v. Roe, 1 Dowl. P. C. 67. (i) Doe d. Nucle v. Roe, 2 Wils. 263. (j) Doe d. Walker v. Roe, 4 M. & P. 11.
- (k) Doe d. Simmons v. Roe, 1 Chit. 228.
 (l) Goodtitle d. Read v. Badtitle. 1 B. & P. 384. 1 Chit. 121.
 (m) Doe d. Briggs v. Roe. 2 C. & J. 202. 2 Tyr. 211. 1 Dowl. P. C.
- (n) Doe d. Warner v. Roe. 2 Dowl. P. C. 517. (o) Doe d. Hubbard v. Roe. 1 Har. & Woll. 371.

her husband being out of the way to avoid being arrested or annoyed, to be used for the purpose of obtaining judgment against the casual ejector.(p) Service of a declaration in ejectment on the wife of the tenant at her husband's residence is sufficient. although the husband does not reside on the pre-

mises. (q)

Service upon the mother of the tenant in Service of possession is not sufficient. (r) So service on a tion on any brother of the tenant in possession was held bad, member of the family. for want of an acknowledgment by the tenant that he had received it.(s) Where the tenant was ill, service on the daughter who read and explained the declaration to her father, was held sufficient.(t) The court of K. B. granted rule to show cause son. why the service of the declaration on a son of the tenant in possession who said that his father was unable to attend to any business; and a subsequent admission, by a person who the deponent believed was the wife of the tenant in possession, that her husband had received it, should be deemed good service.(u) So service of the declaration, by leaving it with the daughter of the tenant in possession, who was confined by indisposition, coupled with an affidavit that she acknowledged the receipt of the declaration, and that she had read it over and explained it to her mother before the essoign day of the term, is sufficient for a rule nisi.(v)

After several ineffectual attempts made to serve a Pretended tenant in possession, on occasion of the last of illness. which his servant admitted that he was in the house, but refused to permit the person applying to see him, the declaration being then delivered to the servant, the court of exchequer made an order that such service should be sufficient. (w) Service on service

k k 2

⁽p) Doe d. Wilson v. Smith. 3 Dowl. P. C. 379.
(q) Doe d. Southampton (Lord) v. Roe. 1 Hodges 24.
(r) Doe d. Smith v. Roe. 1 Dowl. P. C. 614.
(s) Right d. Freeman v. Roe. 2 Chit. 180.
(t) Doe d. Cockburn v. Roe. 1 Dowl. P. C. 692.
(u) 2 Chit. 182.
(v) Doe v. Roe. 2 D. & R. 12.
(v) Doe d. Harray v. Roe. 2 Price 118

⁽w) Doe d. Harvey v. Roe. 2 Price 112.

on tenant.

the servant of the tenant in possession, with a subsequent acknowledgment from the attorney of the latter, that the declaration had been received, is sufficient for rule of nisi.(x)

Son.

Servant

Service upon a son who accepted it, and said he knew what it was for, and would deliver it over to his father, held bad; although it appeared that both the father and son were attorneys. (y) So service, by leaving the declaration with a servant of the tenant in possession, was held bad for want of an acknowledgment that the tenant had received it.(z) Service on a servant is insufficient, though the deponent swears to the belief that the tenant keeps out of the way to avoid being served.(a)

Sunday.

Service upon the servant on a Saturday, with an acknowledgment by the tenant on a Sunday, is insufficient. (b) A declaration was left at the house of the tenant on Saturday, and received by him on the next day, (Sunday,) before the essoign day; held that this was service of process on a Sunday, within the 29 Car. II., c. 7, s. 6, and void.(c)

Servant

Where the affidavit alleged a service upon a servant upon the premises, the tenant being absent, and that the servant had subsequently stated that he had given the declaration to his master, held not sufficient.(d) Where the tenant was not to be found, the court held that a service upon a servant upon the premises, who was desired to deliver it to his master, and afterwards stated that he had done so, was a good service.(e) The delivery of a declaration to an agent of a tenant in possession who had resided abroad, is sufficient. (f) Service on the daughter on the premises will not suffice, unless it is shown that the declaration came to the

Daughter.

⁽x) Doe d. Teverell v. Snee. 2 D. & R. 5.
(y) Woodf. L. & T. 386.
(z) Doe d. Halsey v. Roe. 1 Chit. 100.
(a) Doe d. Jones v. Roe. 1 Chit. 213.
(b) Goodtitle d. Mortimer v. Notitle. 2 D. & R. 232. S. C. nom. Doe
v. Roe. 6 B. & C. 764. S. P. Doe v. Roe. 8 D. & R. 592.
(c) Doe d. Warren v. Roe. 8 D. & R. 342.
(d) Doe d. Thomas v. Roe. 1 M. & Scott 435.
(e) Doe d. James v. Roe. 1 M. & Scott 597.
(f) Doe v. Roe. 4 B. & A. 653.

hands of the father with proper explanation.(g) Rule, that the service of a declaration in ejectment son. on the son of the tenant should be a good service, made absolute, where the affidavit of the tenant in showing cause did not deny having received the declaration from his son.(h) Where there was ser-Daughter, vice in ejectment on the daughter of the tenant in with acpossession, and he on the first day of term acknow- ment by ledged the receipt of the declaration, but not that he father. had received it before the term; held that it was not sufficient.(i) Service of declaration in ejectment sisters. upon the sister of the tenant in possession, who says that she receives it on behalf of her sister, will not be good unless agency be shown.(j) Service on the Daughter. daughter on the premises is insufficient even for a rule nisi, although there may be reason to believe the wife is aware of the proceedings, and keeps out of the way to avoid being served. (k) If a tenant in possession Tenant abis clearly keeping out of the way to avoid being sconding. served, the court will grant a rule nisi for judgment, if the son is regularly served on the premises.(1) Service of declaration in ejectment on Daughter. the daughter of the tenant in possession, is not good service unless it can be shown to have come to the hands of the tenant. (m) Service of a declaration Wife of son. in ejectment on the wife of the son of the tenant of the premises, held to be sufficient to grant a rule nisi for judgment against the casual ejector, where it appeared that the tenant was in America, and that his son managed his business. (n) A declaration Servant, and and notice in ejectment were served upon a servant admission by wife of of the tenant, whose wife subsequently admitted that tenant. she had received them and had given them to her husband; held insufficient.(o) Service of a decla-

⁽g) Doe v. Roe. 2 Dowl. P. C. 414.
(k) Doe d. Watts v. Roe. 1 Har. & Woll. 199.
(i) Doe d. Harris v. Roe. 1 Har. & Woll. 372.
(j) Doe d. Tibbs v. Roe. 3 Dowl. P. C. 380.
(k) Doe d. George v. Roe. 3 Dowl. P. C. 9.
(l) Doe d. Luff v. Roe. 3 Dowl. P. C. 575.
(m) Doe d. Brittlebank v. Roe. 4 M. & Scott 562.
(n) Doe d. Potter. v. Roe. 2 Scott 378. 1 Hodges 316.
(o) Doe d. Tucker v. Roe. 4 M. & Scott 165. 2 Dowl. P. C. 775.

Servant. with his affidavit afterwards.

Bailiff of teurnt

ration and notice in ejectment upon a servant of the tenant upon the premises, is not sufficient unless the servant makes affidavit (or it otherwise appears) that they came to the tenant's hands; or where this cannot be procured, unless considerable diligence is shown to have been used to serve the tenant personally.(p) Service of a declaration in ejectment on the bailiff of the tenant, is sufficient foundation for judgment against the casual ejector, where it appears to have duly come to the hands of the tenant's attorney, who promises to appear. (q)

Agency. Chancery clerk.

Insane

tenant.

Lunatic.

Service on a person appointed by the court of chancery to manage an estate for an infant, is insufficient. (r) The court granted a rule nisi to make service on the clerk of public body, (who was directed to be appointed by an act of parliament,) Book keeper good service. (8) Service on the book keeper of a company in possession of part of the premises is sufficient.(t) Service upon the servant of an insane person is bad; it should be on his committee.(u) Judgment may be entered up, where the service was made on a person who had the care of the tenant in possession, (a lunatic,) and the management of his affairs, though not appointed by a regular committee; and the rule nisi, in such a case, should be generally to show cause, without being directed to any party in particular. (v)

Attorney as agent.

mortgagee.

A rule nisi was granted where the service was made on an attorney who represented himself to be the agent for the tenant in possession, and consented Attorney of to appear for them. (m) Service on a person described as a mortgagee in possession, by delivering it to his attorney, who undertook to appear for him, is not sufficient without an acknowledgment by the mortgagee. (x) If an attorney of one court

(p) Doe d. Pugh. v. Roe. 1 Scott 464. 1 Hodges 6. (q) Jenny d. Mills v. Cutts. 1 Scott 52.

r) Goodtitle d. Roberts v. Badtitle. 1 B. & B. 385.

(s) 2 Chit. 181. (t) Doe r. Ros. 1 Dowl. P. C. 23.

(u) Lofft. 401 (v) Doe d. Aylesbury (Lord) v. Roc. 2 Chit. 183.

(w) 2 Chit. 181. 🎾 Dee d. Collins v. Roe, 1 Dowl. P. C. 613. accept a declaration in an ejectment brought in another, it is no ground for rule either absolute or nisi for judgment against the casual ejector. (y) A rule nisi only will be granted where the defendant's attorney has acknowledged the receipt of the declaration from his client. (z)

When the affidavit of service stated that it had service on been left with the wife of the tenant in possession, wife, husthe husband having absconded, it was held to be sconding, or insufficient. (a) Judgment may be signed against kingdom. the casual ejector, where the service was upon the wife of the tenant in possession, who had left this

kingdom and was settled abroad.(b)

A rule for judgment was made absolute on an On person affidavit which stated that service had been made session. on a person believed to have been left in possession by the tenant, who was out of the way, and also on his attorney; and that a letter was sent by the twopenny post according to the attorney's direction, to the tenant's last place of abode. (c) Where the Affixing detenant in possession absconds, and there is no per-door. son at the house, service, by affixing it up to the door, is good.(d) The court granted a rule nisi, On conspiwhich was afterwards made absolute, where the cuous part house was shut up, and no tenant was in possession, mises. and the declaration was affixed on the most conspicuous part of the premises. (e) A declaration on gateway. stuck up in the gateway of the tenant's premises is not sufficient, unless it be sworn that the defendant kept out of the way to avoid being served. (f) In What sufficient to ab order to obtain a rule nisi, it is not sufficient to cient to obtain rule show that the lessor of the plaintiff had been unsuc-nist. cessful in two attempts to find the defendant at his

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⁽y) Doe d. Walker v. Roe, 1 Dowl. P. C. 569. 2 Tyr. 459. 2 C. & I. 381.

⁽z) 2 Chit. 187. (a) Doe d. Harrison v. Roe, 10 Price, 30. (b) Doe v. Roe, 1 D. & R. 514. (c) 2 Chit. 179.

⁽d) Sprightly d. Collins v. Dunch, 2 Burr. 1116. S. P. Anon, Loft. 266, 273.

⁽e) Doe d. Hill v. Roe, 2 Chit. 178. (f) 1 Chit. 505, n.

dwelling-house, and had therefore stuck up the

declaration on the premises.(g)

Nailing on barn door.

Searching for the defendant.

Tenant absoonding.

Affidavita in such CASCS.

Tenant

Service of a declaration by nailing it on the barndoor of the premises in which barn the tenant had occasionally slept, (there being no dwelling-house, and the tenant not being to be found at his last place of abode,) was allowed to be good service.(h) An affidavit stating that the tenant kept out of the way is insufficient, unless it state that the person who served the declaration searched for the defendant, and could not find him, or did not know where he was to be found.(i) And it should also state the belief of the deponent, that he kept out of the way to avoid being served. (j) The affidavit where no one was in the house, and the declaration was stuck up thereon, must state the deponent's belief that the party absconded with a view to avoid the the service. (k) And where the tenant has absconded, the affidavit must state that a copy of the declaration was left, as well as affixed, on the premises, and that the deponent had used due means to find out such tenant's residence, and verily believes he has absconded.(1) An affidavit of service, where the tenant had left the premises, not stating that the lessor, &c., did not know where he was, was held insufficient.(m) If a tenant in posgoing to re-session leave this country, and resides abroad for the purpose of avoiding his creditors, and the premises be charged with an annuity to the lessor of the plaintiff, to whom a right was reserved to enter, receive the rents, and sell, judgment cannot be obtained against the casual ejector on an affidavit that a declaration was duly served on the premises, and a copy thereof affixed to the outer door; nor can the service of the declaration on the solicitor of such tenant be deemed good, unless he resided

⁽g) Id. (h) Fenn d, Buckle v. Roe, 1 N. R. 293.

⁽i) 2 Chit. 177.
(j) Doe d. Batson v. Roe, 2 Chit. 176. S. P. Anon, 1 Chit. 101, c. (k) Doe d. Lowe v. Roe, 1 Chit. 505, n. 2 Chit. 177.
(l) Doe d. Tarluy v. Boe, 1 Chit. 506.

⁽m) 1 Chit. 506, n.

abroad for the express purpose of avoiding such service.(n) The court will only grant a rule nisi Defendant's for judgment against the casual ejector, where the acknowledgment. motion is grounded on an affidavit of the defendant's acknowledgment that he had endeavoured to avoid the service of the declaration.(o) Where the Premises tenant of a house locked it up, and quitted it, and unoccupied. the landlord three months afterwards fixed a copy of declaration in ejectment to the door; held that the service was not sufficient, but that the landlord should have treated it as a vacant possession.(p)

In the affidavit, in the case of a vacant posses- Lessee not sion, where one copy of the declaration was sworn to have been fixed on the premises, and another served on the lessee, but not on the premises, it is necessary to state that such lessee was tenant in possession at the time of such service. (q) And if Part unocone part of the premises be vacant, and the other in the occupation of a tenant, it is sufficient for the affidavit to state that a copy of the declaration was served on the tenant who occupied the one part, and that another copy was fixed on the door of that part which was vacant. (r)

The affidavit stated that inquiry for one of the Tenant leavtenants had been made on the premises, that it was America. found that he and his family had left the premises for America, that his family had actually embarked, and that it was believed that he did not intend to return; the declaration had been fixed on the door of such tenant's house, and had also been delivered, and read over, and explained, to a person on the premises, a servant to one of the tenants of another part of the premises. A rule to show cause was granted to be served in the same manner as the declaration.(s) The lessor of the plaintiff, who Heir at law. claims as heir at law, cannot compel a person to

⁽n) Roe d. Fenwick v. Doe, 3 Moore, 576.
(o) 2 Chit. 186.
(p) Doe d. Darlington (Lord) v. Cock, 4 B. & C. 259.
(q) Doe d. Seabrook v. Roe, 4 Moore, 350.
(r) Doe d. Evans v. Roe, 4 Moore, 469.
(s) Doe d. Osbaldiston v. Roe, 1 Dowl. P. C. 456.

appear and plead to issue in an action of ejectment without serving him with a copy of a declaration. although the premises were unoccupied, and a copy had been affixed on the outer door thereof. (t)

Nailing on door of stable.

Premises

door.

deserted.

Unfinished houses.

Other circumstances

In an ejectment for a stable, service of the declaration, by nailing it to the door thereof, no person being therein, and then going to the defendant's house and informing him of what had been done, was held insufficient to ground a rule that the service be deemed good. (u) When premises are totally deserted, and there is no one on whom service can be effected, judgment cannot be had against the casual ejector, but the proceeding must Affixing on be as upon a vacant possession. (7) An affidavit of service on W. D., tenant in possession, by affixing the declaration on the door, no person being therein; held to be insufficient for judgment Person in the casual ejector. (w) Rule for judgment shutting up. against the casual ejector refused where the house was found shut up three days before the term, and the declaration was fixed on the door, it appearing that the tenant was in the habit of shutting up the house and staying away for several days together.(x) Where part of the property for which an ejectment was brought consisted of three unfinished houses which were untenanted, and there was no property in them, the court refused to allow the service of the declaration by sticking it up on the outer door, but obliged the lessor of the plaintiff to proceed as upon a vacant possession.(y)

Service of a declaration in ejectment on a person not named therein as tenant in possession is not sufficient. (z) Service on a person who asserts that he is owner, that there is no tenant in possession, without more is insufficient.(a) Nor will the court

⁽t) Doe d. Younghusband v. Roe, 6 Moore, 480.
(u) Doe d. Lovel v. Roe, 1 Chit. 505.
(v) Doe d. Norman v. Roe, 2 Dowl. P. C. 399, 428.
(w) Doe d. Roe, 4 Dowl. P. C. 173.

⁽x) Doe d. Roupell v. Roe, 1 Har. & Woll. 367.
(y) Doe d. Schovell v. Roe, 3 Dowl. P. C. 691. 2 C. M. & R. 42.

z) Doe v. Roe, 2 Tyr. 280.

⁽a) Doe d. Davis v. Roe, 1 Price's P. C. 11.

on such service grant a rule to show cause.(b) Where a tenant in possession was personated, at Personating the time of service, by another, who accepted the service in her name, it was held to be a good service on the tenant herself. (c) But service on a person Believe as to whom the deponent believed to be the tenant in possession is bad, if the notice be not addressed to such person.(d) Service in the name of the tenant on a Representaperson representing himself to be in possession for tion. another, then temporarily absent, and who afterwards acknowledges an apprisal of the service, is sufficient to obtain judgment against the casual ejector.(e) Service on the executors of the late tenant in possession is bad, if it does not appear that they were the tenants in possession. (f) As, if there had been Representarepresentatives who had taken possession, they tives. should have been addressed by name; if not, the lessor of the plaintiffs should have proceeded as in the case of a vacant possession.(g) Where a ser- Servant revant of the deceased tenant remains in possession, maining in possession, possession. the plaintiff ought to endeavour to get possession; and if he resists, such servant may be treated as tenant, and the declaration may be served on him as such; and if he does not resist, it seems that the lessor may treat it as a vacant possession.(h) When service of a declaration in ejectment was made at a house where it was sworn it was believed the tenant was, but was denied for the purpose of avoiding the service, the court granted a rule nisi for judgment The court granted a Turnkey of against the casual ejector.(i) rule for judgment against the casual ejector, when the prison. service had been by leaving the declaration with the turnkey of the prison in which the tenant in possession was confined, with directions to give to him,

⁽c) Denn d. Tyrell v. Denn, 2 Burr. 1181.
(d) Doe d. Badtitle, 1 Chit. 215.
(e) Doe d. Walker v. Roe, 1 Price, 399.
(f) Doe d. Paul v. Hurst, 1 Chit. 162.
(g) Doe d. St. Margaret, Westminster, v. Roe, 1 Moore, 113; and see Hazlewood d. Price v. Thatcher, 3 T. R. 351.
(b) Doe d. Atking v. Roe, 2 Chit. 179.

⁽h) Doe d. Atkins v. Roe, 2 Chit. 179.
(i) Doe d. Turncroft v. Roe, 1 Har. & Woll. 371.

and the tenant had acknowledged that he had received it before the first day of the term. (j)

Son in possession.

An affidavit held sufficient which stated that the party making it had gone to the premises, where he found the son of the tenant in possession, to whom he explained the nature of the declaration, and left a copy with him, having learned from him that the father was not at home, and would not return before midnight; and that he called again next day and saw the wife, who informed him that her husband Door closed, had gone out, but she did not know when.(k) So but niece in an affidavit was considered sufficient for a rule nisi, which stated that the deponent went to the premises but found the door closed, and knocked but gained no admission; that he looked through a window and saw the niece of the tenant in possession; that he again knocked but could not get in; that he then explained through the door the nature and object of the service, and posted the declaration against the door; that two conversations afterwards took place between the deponent and the attorney of the tenant, from which it appeared that the declaration had been brought that attorney. (1) Leaving de- So an affidavit, which stated that the deponent had gone to the premises and seen the tenant, to whom he offered the declaration, but who refused to take it: that he then laid it on a chair, and explained the nature and object of the service; that the tenant then left the room, saying that he would not take any paper from the deponent or any other person on the part of the lessor. (m) So, where the deponent had on the premises presented the declaration to the wife, upon whose refusal to take it he had left it on a table, after the proper explanation; that the wife having thrown it after him, he had picked it up and affixed it on the most conspicuous part of the premises. (n) If the tenant in posses-

the house.

Presenting declaration to wife, and leaving same.

claration.

⁽j) Doe d. Harris v. Roe, 2 Dowl. P. C. 607. (k) Doe d. Whetherell v. Roe, 2 Dowl. P. C. 441. (l) Doe d. Mortlake v. Roe, 2 Dowl. P. C. 444. (m) Doe d. Visger v. Roe, 2 Dowl. P. C. 449. (n) Doe d. Courthorpe v. Roe, 2 Dowl. P. C. 441.

sion by fraud prevents a complete and regular service of the declaration in ejectment, judgment may still be obtained against the casual ejector. (0) Where a tenant in possession keeps out of the way to avoid being served, a rule nisi for judgment may be obtained by a service on the agent of the tenant on the premises.(p) Where the tenant in possession has absconded to another country, the service of the declaration in ejectment may be effected on his agents on the premises. (q)In ejectment, if the tenant resides abroad, service on an agent who resides on the premises is sufficient. (r)Where a tenant in possession was very unwell and afterwards died, and a declaration in ejectment was served on a person at the house where he stayed on the day of his death, it is not a good service.(s) proceedings are taken under statute 4. G. II., c. 28, affixing the declaration in ejectment upon the door of the demised premises, will not be allowed as good service, if there is any probability that the tenant can be personally served. (t)

By the late general rules of the courts, declara- Time of tions in ejectment may be served before the first service. day of any term, and thereupon the plaintiff shall be entitled to judgment against the casual ejector, in like manner as upon declarations served before the essoign or first general return day. (u) this rule, service must have been before the essoign day of the term; and where the service was before that day, and the explanation of it to the tenant in possession did not take place till after that time, the plaintiff was not entitled to judgment. (v) For, service. where the service was on a third person, an acknowledgment by the defendant of the receipt of the

(o) Doe d. Frith v. Roe, 3 Dowl. P. C. 569.

⁽c) Doe d. Frith v. Roe, 3 Dowl. P. C. 569.

(p) Doe d Morpeth v. Roe, 3 Dowl. P. C. 577.

(q) Doe d. Robinson v. Roe, 3 Dowl. P. C. 11.

(r) Doe d. Treat v. Roe, 4 Dowl. P. C. 278. 1 Har & Woll, 526.

(s) Doe d. Hartford v. Roe, 1 Har. & Woll, 352.

(t) Doe d. Pugh v. Roe, 1 Scott, 464. 1 Hodges, 6.

(u) Reg. Gen. T. T. 1 W. IV., K. B., C. P., and Exch. 2 B. & Adel.

789. 7 Bing, 784. 4 C. & P. 604. 1 C. & I. 472. 1 Dowl. P. C. 104. 1

Tyr. 523. 5 M. & P. 816. Price's P. C. 110. 4 Bligh, N. S. 588.

(r) Doe v. Roe, 1 D. & R. 563.

declaration was not sufficient in K.B., unless it was sworn that the admission was before the essoign day.(m)

Acknowledginent.

It must have appeared on the affidavit that the tenant had acknowledged himself to have received the declaration, or to have known of the service thereof previously to the essoign day of the term. (x)Service before the essoign day on the daughter of the tenant in possession in the absence of him and his wife, was not sufficient, even though the tenant had since declared that he had received the same. if it did not appear that he had received it before the essoign day.(y)

It was sworn that the tenant in possession had acknowledged the receipt of the declaration in ejectment "about the latter end of February;" held, a sufficient acknowledgment by the tenant of the

receipt of the declaration. (z)

Servant.

Although the court will sometimes make that a good service, under particular circumstances, which would otherwise be imperfect; yet, where the service has been after the proper day, they will not allow it to be antedated. (a) Where the service is on a servant of the tenant in possession, and the latter afterwards acknowledges the receipt, the affidavit to ground the motion for judgment should state when such acknowledgment was made.(b) Where a declaration in ejectment was served on the essoign day by mistake, the court directed the rule for judgment to be served on the tenant in possession, and granted the rule for judgment against the casual ejector, absolute, unless cause was shown in five days after such service.(c)

It is no ground of nonsuit, that the service is on

⁽w) Doe d. Tindal v. Roe, 2 Chit. 180. So in C. P. Doe d. Macdougal v. Roe, 4 Moore, 20.
(x) Doe d. Wilson v. Roe, Ad. Eject. 209. S. P. Doe v. Roe, 1 D. & R. 563.

⁽y) Roe d. Hambook v. Doe, 14 Rast, 441. S. P. Anon, 1 Chit. 118, a. But see Smith d. Stourton v. Hurst, 1 H. Black. 644.
(s) Doe v. Roe, 1 Dowl. P. C. 366.
(s) Anon, Woodf. L. & T. 386.
(b) Anon, 2 Chit. 187.

⁽c) Doe d. Brent v. Roe, 1 C. & I. 483. S. P. Doe d. Shepard v. Roe, 1 Price's P. C. 32. S. C. nom. Doe v. Roe, 1 Tyr. 499.

a day subsequent to that of the demise to John Doe, if it appears that there is rent in arrear, and no distress on the premises at the time the declaration is served. (d) In ejectment, it is no defence at nisi prius, that the declaration was irregularly served, as where it was served after the term, in a case not within 11 G. IV., and 1 W. IV., c. 70, s. A service at the house on a day past, may be made good by a subsequent rule of court. (f)

The affidavit of service must state the person to amount or

be tenant in possession, and it should appear clearly nervice. from the affidavit that the person who was the object of the service was the tenant in possession.(g) But it is sufficient, if it implicitly show that the defendant was tenant in possession at the time the declaration was served on his wife.(h) The affidavits must not qualify the possession of the tenants in possession, by stating the service to be on them as executors.(i) The court of exchequer refused a rule for judgment against the casual ejector, on an affidavit stating, that the premises were shut up, but that A. B., as administrator of C. D., was the tenant in possession thereof, under a lease thereof granted by D., deceased; the said A. B. having paid rent for the said premises within the last month.(j)

Judgment against the casual ejector may, under special circumstances, be obtained on an affidavit, swearing the service to have been on the tenant in possession, "as the deponent believes." (k)ejectment on a vacant possession, the affidavit that six months' rent is in arrear may be made by a receiver.(1) The affidavit of there being no suffi-

⁽d) Doe d. Lawrence v. Shawcross, 5 D. & R, 711. 1 B. & C. 752. (e) Doe d. Ramkin v. Brindley, 1 Nev. & M. 1. 4 B. & Adol. 84.

(j) Methold v. Nought, 1 W. Black. 290. S. P. Gulliver v. Wagstaff, 1 W. Black. 317.

⁽g) Anon. 1 Price, 399. S. P. Anon, 1 Chit. 118, a.
(k) Anon, 1 Chit. 500.
(i) Doe v. Roe, 2 Tyr. 158. 2 C. & I. 45. 1 Dowl. P. C. 295. S. C. nom. Doe d. Holmes v. Roe, 1 Price's P. C. 139.

⁽j) Id. (k) Doe d. George v. Roe, 3 Dowl. P. C. 22. (l) Anon, 3 M. & Scott, 751.

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service.

cient distress on the premises must be positive; (m)the deponent's belief will not do.(n) the affidavit of service in ejectment appears defective, a party who has been served take advantage of the defect before judgment is marked.(o) An agent of the lessor of the plaintiff may make affidavit of rent in arrear, required in ejectment on a vacant possession.(p) declaration in ejectment was served on the son of the tenant in possession, upon an affidavit that the father was in the house at the time, the court refused to interfere, on counter affidavits that he was not at home, but absent on business, and not to avoid service. the affidavits not negativing that the son gave the declaration to the father before the first day of term. (q) An affidavit of the service of a declaration in ejectment must state that the party served is tenant in possession.(r) The affidavit of service of a declaration in ejectment on an administratrix must call her tenant in possession, and state that the property was leasehold.(s) The affidavits in support of an application for judgment against the ejector must swear to a service on the "tenant in possession," the word "occupier" not being sufficient. (t) An affidavit of service of a declaration in ejectment upon the person in possession is sufficient. (u) A memorandum at the back of a declaration in ejectment of the service four years back, in the handwriting of a person who had since left the country; held, not sufficient to allow judgment to be entered up against the casual ejector. (v)

Explanation of service.

It was at one time held, that the affidavit must show that the notice was read and explained to the tenant; for if it only stated it to have been read, it

⁽m) Doe v. Roe, 2 Dowl. P. C. 413. (a) As to the title of affidavite, see Doe v. Roe, 3 Tyr. 602. 2 Dowl. P. C. 55.

⁽c) Gabbot v. Ejector, l Alcoek & Napier, 184 (Irish).
(p) Doe d. Charles v. Roe, 2 Dowl. P. C. 752.
(q) Doe d. Protheroe v. Roe, 4 Dowl. P. C. 385.
(r) Doe d. Talbot v. Roe, 1 Har. & Woll. 367.
(s) Doe d. Rigby v. Roe, 1 Har. & Woll. 368.
(t) Doe d. Jackson v. Roe, 4 Dowl. P. C. 609.
(v) Doe d. Oldham v. Roe, 4 Dowl. P. C. 714.

⁽u) Doe d. Oldham v. Roe, 4 Dowl. P. C. 714. (v) Doe d. Twisden v. Ree, 1 Har. & Woll. 218.

was not sufficient, unless the tenant had since ac-Explanaknowledged that he understood the meaning and intention of the service.(w) But with such an acknowledgment, the service was good without any statement of the reading or explanation.(x) now held that it will suffice to read it over without explaining it, or to explain it without reading it over.(y) If the tenant in possession reads over, and says he understands the nature and object of a declaration in ejectment, it is not necessary for the person serving it to read it over or explain it.(z) A rule nisi was granted, where it appeared from circumstances that the parties understood the contents of the declaration, though the affidavit did not state that it was explained to them.(a) the declaration was put through an iron grating to the defendant, who was in Newgate.(b) So where the declaration was put on a table before the defendant, but could not be delivered to him, as the defendant's son prevented the person from serving it.(c) Service on the wife on the premises, and reading over the notice without explaining it is sufficient. (d) A rule nisi can only be obtained in the first instance, when the affidavits do not state that the import of the declaration was explained to

The court will grant a rule nisi for judgment Rule nisi. against the casual ejector, where the nature and object of the process has been explained to the tenant, but in consequence of his refusal the declaration has not been left with him. (f) became necessary to employ an interpreter, in order to explain to the tenant the object of the declara-

the servant to whom it was delivered.(e)

(w) Doe d. Whitfield v. Roe, Ad. Eject. 214.
(x) Doe d. Quintin v. Roe, Ad. Eject. 215.
S. P. Doe d. Thompson v. Roe, 2 Chit. 186.

⁽y) Doe v. Roe, I Dowl. P. C. 428.
(z) Doe d. Jones v. Roe, I Dowl. P. C. 518.
(a) Anon, 2 Chit. 184.
(b) Wright d. Bailey v. Wrong, 2 Chit. 185.
(c) Anon, 2 Chit. 185.
(d) Doe v. Roe, 2 Dowl. P. C. 199.
(e) Anon, 2 Chit. 182.
(f) Doe d. Korber p. Roe, 2 Dowl. P. C. 45.

⁽f) Doe d. Forbes v. Roe, 2 Dowl. P. C. 452. г г 3

tion in ejectment, but who was not upon oath, it was held that the explanation was sufficient to entitle the lessor of the plaintiff to sign judgment.(g)

Acknowledgment of service.

An acknowledgment by the tenant in possession of the receipt of the declaration in ejectment, made on the first day of term, January 12, but not saying when it was received, is not sufficient to make good a service on his son on January 10, on the premises. (h) On motion for judgment against the casual ejector, if service of declaration is to be proved by the tenant's acknowledgment made in term, it must appear by such acknowledgment that the service was before the term.(i) Service of a declaration in ejectment upon the tenant's daughter before the term, and an acknowledgment by the tenant within the term; held sufficient to ground a motion for judgment against the casual ejector.(j)

Service on wife.

If the wife on the premises has received the declaration, and prevents the person serving it from giving explanation, or reading it over, the service is sufficient.(k) The court granted a rule nisi for judgment against the casual ejector on an affidavit, merely stating that the tenant "appeared to be acquainted with the intent of the declaration," without stating that it had been either read or explained to him. (l)

Other mettera

The affidavit should not be intituled in the real names of the defendants.(m) Where the lessors of the plaintiffare described to be executors, the affidavit of service need not, in stating the name of the cause, notice the characters of the lessors stated in the declaration.(n) If the affidavit be made by a person who saw the declaration served, and heard it explained to the tenant in possession it is sufficient.(0)

(g) Doe d. Probert v. Roe, 3 Dowl. P. C. 336. (k) Doe d. Martin v. Roe, 1 Har. & Woll. 46.

⁽i) Doe d. Marshall v. Roe, 2 Adol. & Ellis, 588. 4 Nev. & M. 563.
(j) Doe d. Smith v. Roe, 4 Dowl. P. C. 265.
(k) Doe d. George v. Roe, 3 Dowl. P. C. 541.
(l) Doe d. Downes v. Roe, 4 Dowl. P. C. 563.

m) Anon, 2 Chit. 181. (n) Doe d. Jenks v. Roe, 2 Dowl. P. C. 55. S. C. nom. Doe v. Roe, 3 Tyr. 602.

o) Goodtitle d. Wanklen v. Badtitle, 2 B. & P. 20.

The court granted a rule nisi, where the affidavit was jointly made by the person who served the declaration and the housekeeper of the tenant in possession; the former stating a service on the latter with the proper explanation, and the latter stating that she had delivered the declaration to her master.(p) Affidavits may be sworn before attorneys in the cause.(q)

(p) Doe v. Roe, 2 Dowl. P. C. 198.
(q) Doe d. Cooper v. Roe, 2 Y. & L. 284.

(1.)

Cognovit in Ejectment.(r)

In the, &c.

Between John Doe, on the demise of Andrew Blowman, (or on the several Plaintiff. demises of Andrew Blowman and Benjamin Bonner,)

and

Thomas Andrews.

Defendant.

Cognovit

I no hereby confess this action, and that the said John Doe is entitled to recover his term, [or terms] yet to come of and in, &c., (here set out the parcels as in the declaration,) with the appurtenances, situate in B., in the county of S., the tenements in the declaration in this cause mentioned; and also that he hath sustained damage by reason of the trespass and ejectment, [or trespasses and ejectments,] in the said declaration mentioned to the sum of one shilling, besides his costs and charges in this behalf. to be taxed by the master, [or in C. P. Prothonotary. And in case I shall make default in delivering up possession of the premises aforesaid, or in the payment of the damages and costs as aforesaid, on the —— day of, &c., next, then the landlord shall be at liberty to enter up judgment for his term [or terms] of and in the said premises, and for his said damages and costs above acknowledged; as also for the costs of entering up such judgment and of suing out execution. And that he shall be at liberty thereupon forthwith to sue out execution for the same, together with sheriff's poundage, costs of levy, and all other incidental expenses. And I do hereby agree [to withdraw the plea

⁽r) When the tenant has appeared, and entered into the common consent rule, he then becomes defendant, after which a cognovit may be accepted from him by the plaintiff. By taking a cognovit the lessor of the plaintiff is enabled to recover the costs of the action against the defendant by the execution, instead of resorting to the action for mesne profits.

pleaded by me in this cause, and not to bring any writ of error, or file any bill in equity, to delay the plaintiff in his proceedings. Dated, &c.

(2.)
Another Form of Cognovit.

In, &c.

Between John Doe, on the demise of A. B., plaintiff,

and

C. D. defendant.

I confess this action, and that the said John Doe Cognovis. is entitled to recover his term yet to come, of and in - messuages, with the appurtenances, situate, &c., being parcel of the tenements mentioned in the declaration in this cause; and also that the said John Doe hath sustained damages by reason of the trespass and ejectment complained of, to the sum of, &c., besides his costs of suit, to be taxed by the, &c., but no judgment is to be entered up, or execution issued, until the —— day of, &c., next, in default of my then delivering up the possession of the said messuages, &c., to the said A. B., and paying him the said sum of £---, together with the said costs. And I do hereby undertake, that no writ of error shall be brought, or any bill in equity filed, to delay the plaintiff in his proceedings. Dated, &c.

(3.)

Warrant of Attorney in Ejectment.(8)

To J. K. and L. M., gentlemen, attorneys of her warrant of majesty's court of queen's bench, (common attorney).

pleas or exchequer,) at Westminster, jointly and severally; or to any other attorney of the same court.

These are to desire and authorise you, the attor-

⁽s) By virtue of a warrant of attorney the tenant may agree to give up possession at a certain specified time to a party, without the form of serving a declaration in ejectment.

neys above named, or any one of you, or any other attorney of the court of queen's bench (common pleas or exchequer) aforesaid, to appear for me, Thomas Andrews, of, &c., in the said court, as of this present (or last) term, or of any other subsequent term, and then and there to receive a declaration for me, in an action of trespass and ejectment at the suit of John Doe, on the demise of A.B., for two messuages, &c., [setting out sufficient parcels to cover the premises, in the same way as in a declaration in ejectment,] with the appurtenances, situate in the parish of B., in the county of S., which the said A. B., on the —— day of, &c., had demised to the said John Doe for the term of seven years from thence next ensuing, and fully to be complete and ended; and thereupon to confess the same action, or else to suffer judgment by nil dicit, or otherwise to pass against me, in the same action; and to be thereupon forthwith entered up against me, of record in the said court for the recovery of the said term yet to come, of and in the said tenements, with the appurtenances; and also for the recovery of one shilling damages, (or if any thing is agreed to be paid for mesne profits, this may be a real, instead of a nominal sum,)(t) besides costs of suit. And I, the said Thomas Andrews, do hereby further authorise and empower you, the said attorneys, or any of you, after the said judgment shall be entered up as aforesaid for me, and in my name, and as my act and deed, to sign, seal, and execute, a good and sufficient release in the law to the said A. B., his heirs, executors, and administrators, of all, and all manner of error and errors, writ and writs of error, and all benefit and advantage thereof, and all misprisons of error and errors, defects and imperfections whatsoever, had, made, committed, done, or suffered, in, about, touching, or concerning the aforesaid judgment, or in, about, touching, or concerning any writ, warrant,

⁽f) Or say here," And for the recovery of \mathcal{L} —— damages, besides costs of suit."

process, declaration, plea, entry, or other proceeding whatsoever, of, or any way concerning the same. And for what you, the said attorneys, or any one of you, shall do, or cause to be done, in the premises, or any of them, this shall be to you and every of you, a sufficient warrant and authority. In witness whereof I have hereunto set my hand and seal, the —— day of, &c.(u)

Signed, sealed, and delivered, (being first duly stamped,) in the presence of

"Memorandum. The above warrant of attorney is given for the purpose of securing to the said A. B. the delivery up to him on the —— day of, &c., the possession of a certain messuage, farm, and lands, called, &c., situate, &c.; (and if so agreed on say, 'And also the payment to him of the sum of £——, in satisfaction of all mesne profits and damages up to that time;') and it is agreed between the said parties, that no judgment shall be entered up, nor writ of possession or other execution issued, unless the said Thomas Andrews shall make default in delivering up such possession at the time aforesaid [or in payment of the said sum of £——]. But in case he shall make such default, judgment may be entered up, and a writ or writs of possession issued, as also execution for the said damages, and costs of such writ or writs of possession; and of such execution as aforesaid, besides all sheriff's poundage, officer's fees, and other incidental expenses."

OBSERVATIONS AND CASES.

(On Ejectment between Landlord and Tenant.)

Landlord's right to take possession.

A PERSON who has a clear right of possession may take it, provided he can do so by stratagem, or even by a degree of force not amounting to an assault, or forcible entry, or breach of the peace. In these cases, the right will be an answer to any action brought by the person ejected.(v) landlord, after the expiration of a tenancy, may take possession, or turn out his cattle, or drive off those of the tenant holding over.(w) And a landlord is entitled to, and may take, the crops growing, or cut after the tenancy determined, unless the tenant was entitled to them as an away going crop; and in the absence of the occupier, the landlord may break open the outer door and take possession, although the goods of the tenant remain there. (x)

Service of declaration,

To take crops.

> Formerly, it was a rule in all the courts, that all declarations in ejectment should be served before the essoign day of each term; but now, by the general rule, Trin. T., 1 W. IV., applicable to all

> (v) 1 Burr. 60, 88. Com. Dig. title "Condition," o. 3; and see Taylor v. Cole, 3 T. R.; Turner v. Maymott, 1 Bing. 158. 7 Moore, 574. S. C. Butcher v. Butcher, 7 B. & C. 399. 1 M. & R. 220, S. C. Doe d. Roby v. Maisey. 8 B. & Cres. 767.
>
> (x) 7 T. R. 431. 1 Price's R. 53.
>
> (x) 3 Bing. 11. 1 P. 53. So a person who has recovered in ejectment may, without a write take possession—1 Rure 60.88. 19 Med. 202.

may, without a writ, take possession.—1 Burr. 60, 88. 12 Mod. 398. 2 Ld. Raym. 806, 808. A mortgagee may take possession of the mortgaged property without even a prior demand, unless there is a subsisting tenancy which commenced before the mortgage.—8 B. & C. 767. 5 Bing. 421. And the old doctrine of a mortgagee bringing an ejectment in order to get into receipt of the rents, is now exploded; for a mortgagee may distrain if the tenancy was antecedent to the mortgage, or take possession if it was subsequent. So a tenant by elegit may enter on the possession of the defendant, or recover rents from the tenants, without any previous action of ejectment—6 Taunt. 202. However, in taking possession no assault, forcible entry, or breach of the peace, must be committed, or the party will be indictable.—7 T. R. 432. 8 T. R. 357. And where serious resistance is expected, it will be most prudent to obtain the assistance of magistrates, under the statute 11 G. II., c. 19, and 57 G. III., c. 53, or under the statutes against forcible detainers, or to proceed by action of ejectment after recovery, in which the sheriff must deliver exclusive possession, taking with him the posse comitatus if necessary; and when the right is fairly contested, or it is important to have it judicially settled, then it is better to proceed by ejectment.

the courts, and to all proceedings in ejectment, it Rule T. T., was ordered that declarations in ejectment may be 1 w. Iv. served before the first day of any term; and thereupon the plaintiff shall be entitled to judgment against the casual ejector in like manner as upon declarations served before the essoign or first general return day.(y) When the service was required to be on or before the essoign day, the affidavit of such service must have shown that, in fact, the tenant in possession actually received the declaration before midnight on that day. of the delivery of the declaration, and explanation of its object, at any hour on that day, to the tenant himself, or to his wife, on the premises or at his residence, discloses a sufficient service. But if the service or explanation be not made till a subsequent day, the service is insufficient. (z)

If the tenant or his wife be not at home, the General redeclaration may be served on his child or servant, marks on service of or, indeed, on any other person on the premises; declaration in ejectmen and if it afterwards appear from the acknowledgment of the tenant himself, or of his attorney, (a) that the tenant received the declaration before the first day of the term, the service will be deemed sufficient; (b) but the wife's acknowledgment in such a case will not, in general, be sufficient.(c)

When the declaration is not served personally on the tenant or his wife, the manner in which it was served should be stated to the court in the affi-

(y) But still it is necessary to consider the decisions as to what consti-

tuted a sufficient service on the day before the essoign day, as they will be still applicable to cases of service before the first day in full term.

(z) 1 D. & R. 568. The declaration should be regularly served on either On service the tenant himself or his wife.—2 W. B. 800. 2 Wils. 263; and see Doe of declaration.

d. Walker v. Roe, M. & P. 11. In this case, the service was on a woman tion. who represented herself to be the tenant's wife, and it was held sufficient.

—And see the cases Doe d. Simmons v. Roe, 1 Chit. Rep. 228. Doe d. Smith v. Roe, 1 Dowl. P. C. 614. The declaration may be served on the tenant himself anywhere; if on the wife, it may be served either on the premises, or at the husband's house; and provided she was living with her husband at the time, it may be served on her anywhere else.—Wingfield v. Roe, 1 Dowl. P. C. 693. But in all other cases, it must be served upon the premises. upon the premises.—See p. 383.
(a) See Doe v. Roe, 2 D. & R. 12.

⁽b) Sec 4 Barnes, 183. (c) 1 Dowl. P. C. 312. But sec Doc v. Roc, 2 D. & R. 12. Doc d. Harrison v. Roe, 10 Price, 30.

davit of service, when judgment is moved for

against the casual ejector. (d)

Proceedings

Notwithstanding the recent acts which afford a landlord several facilities and peculiar advantages in actions of ejectment which do not extend to other persons, yet he may proceed in the ordinary

See notes(h)

In some cases, justices of the peace may interand (i) to p. fere summarily in giving possession, without proceeding by action of ejectment, besides the common

right to take possession when entitled to it.

Power of iustices to

By the 11 G. II., c. 19, s. 16, it is provided, that justices to put landlord if any tenant at a rack rent, (e) or where the rent shall into posses. be full three fourths of the yearly value, shall be in arrear one year's rent, and shall desert the premises, and leave the same uncultivated, or unoccupied, so as no sufficient distress can be had to countervail the arrears, it shall be lawful for two justices, at the request of the landlord, (f) to go and view the premises, and to affix a notice in writing what day (at the distance of fourteen days at the least) they will return to take a second view; and if upon the latter no person on behalf of the tenant shall appear and pay the arrear of rent, or if there shall not be sufficient distress on the premises, then they shall put the landlord into possession, and the lease thereof shall be void.(a)

> (d) Where the tenant absconds, or keeps out of the way to prevent being served, a copy of the declaration should be delivered to his relation, or servant, or some other person on the premises, to whom the notice should be read over and explained, and another copy affixed on the outer door, or some conspicuous part of the premises; and thereupon, if it be made appear to the satisfaction of the court that the tenant abaconded, or kept out of the way to avoid being served, but not otherwise, the court, on an affidavit of the facts, will grant a rule nisi that the service on his relation, or servant, &c., shall be deemed good service, and direct in what manner the rule shall be served.—Doe d. Osbaldiston v. Roe, 1 Dowl. P. C. 456.
>
> (e) That is, such rent that could be fairly obtained.—See 2 B. & A. 652.
>
> (f) This need not be on oath or in writing.—3 B. & C. 649. 5 D. & B. 658. See the forms adopted in these proceedings under the head "Notices."

"Notices.

(g) But the tenant may appeal by affidavit and motion to the court of queen's bench or common pleas, &c., who may order restitution, or may aftirm the act of the justices, and award costs not exceeding £5 for the frivolous appeal. The formal proceedings under the act will be found considered in 1 B. & A. 369. 3 D. & R. 501. 1 C. & P. 121. 3 B. & C. 649. 5 D. & R. 558. The preamble of this act being confined to formal provisoes of re-entry, in which actions of ejectment were sustainable,

The 59 G. III., c. 12, s. 24 and 25, gives sum-summary mary powers to justices to give possession of cot-powers. tages occupied by paupers. (h) And besides these remedies, justices have power to interfere under the statutes against forcible detainers, but they are very

reluctant to do so. (i)

Notwithstanding the act of 4 G. II., c. 28, s. 2, 4 G. II., c. providing as to proceedings for forfeiture by non- 28, a. 2. payment of rent, the landlord, in order to avoid the Proceedings delay of six months, may still proceed at common at common law, even when only a quarter's rent is due, by law, not withstandobserving certain formal requisites; and this is ing this necessary to complete a forfeiture when there is suf-statute. ficient property of the tenant, or even of a third person, to pay the arrear of rent. (j)

The advantages in the practical proceedings in ejectment (k) in favour of landlords is so qualified, that if he proceed by requiring the tenant to find bail, then, if the action fail, the landlord will have

to pay double costs.(1)

In general, the security for bail cannot be required in any action for tort, and a declaration in ejectment must be served before the first day in full term.

No damages are recoverable in ejectment, but Action for

(1 B. & A. 369,) it was found necessary to extend the provisions to cases where only half a year's rent is in arrear, and where there is no clause of re-entry, and to verbal tenancies, and which was effected by 57 G. III.,

(A) 8 B. & C. 4; and see the recent act, p. 418, for facilitating the reco- 1 & 2 Vict., very of possession of tenements, after due determination of the tenancy, c. 72.

where there is no rent, or where the rent does not exceed £20 a year.

(i) See Burns' Justice, tit. Foreible Entries and Detainers.

(j) 7 T. R. 117. In this case the landlord must go in person, or execute Forms unaformal power to another, who must go in person (7 East, 363) at a reasonder the act. able time (usually half an hour) before sunset, and not at one o'clock in the day, (3 C. & P. 613,) on the last of the twenty-one or other number of days neglect in the provise for respire, and at the front door, or most days named in the proviso for re-entry, and at the front door, or most public part of the demised premises, or where a place elsewhere is appointed by the lease, then at that place, (Co. Lit. 201,) and there formally demand payment of the exact errear of rent, and wait there, repeating such demand, until after sunset.—7 T. R. 117. See the form of proceedings, I Saund. 287, n. 16. Any mistake as to the amount of rent will be fatal; as, demanding half a year's rent when only a quarter is due.—3 Carr. & P. 613. The day of the demise must be after the demand. The forfeiture will be thus completed; and at law the tenant will have no relief, though he may obtain it in equity on proper terms, if the premises remain unlet.

(k) See 1 G. IV., c. 87, s. 1, see p. 363. 2 G. IV., and 1 W. IV., c. 70, s. 36.

(l) 1 G. IV., o. 87, s. 6.

damages.

the lessor of the plaintiff is obliged to bring a separate action of trespass for the mesne profits; so no bail in error can in general be required. But in some cases of ejectment brought by a landlord, he may compel the tenant holding over, to give sureties or bail for the payment of damages and costs, (m) and may, when his right accrued after the first day of term, deliver his declaration any day in or after Hilary or Trinity term, and proceed to trial at the ensuing assizes; and may, in all cases, on proving the service of notice of trial, recover mesne profits and costs in the same action, and may insist on having two responsible persons as bail, in case a writ of error should be brought.(n)

1 G. IV. Holding over.

The terms of the act 1 G. 4,(0) c. 87, is confined to holding over after the expiration of a tenancy, constituted in writing, and therefore when a tenant held from year to year under a letting by parol, it was holden not to be within the act.(p) mere agreement in writing for a lease for a term certain, and a holding over beyond that term, is holding for a certain term. (q) So a holding apartments for three months certain, is a tenancy for a term certain.(r) But a tenancy for years determinable on lives, is not a term certain within this act,(s) and the statute only applies where there was a term certain, in a tenancy from year to year, and not to the middle case of a term for 14 years, determinable by notice at the end of the first seven, and determined by such notice accordingly.(t)

Notice:

The notice at the foot of the declaration under this act must be signed by the lessor of the plain $tiff_{i}(u)$ and not in the name of the casual ejector, and is to be a separate notice, to appear on the first day of next term, and be given in addition to the

⁽m) 1 W. IV., c. 70, s. 36. See p. 371.
(n) 1 G. IV., c. 87, s. 3. See p. 368; and see 415, note (i).
(o) See pp. 369, 370.
(p) 5 B. & A. 770. 1 D. & R. 433. 6 Moore, 54. M'Clel. 492.
(q) 2 D. & R. 565.
(r) 5 B. & A. 766. 1 D. & R. 433. 6 Moore, 54. 2 D. & R. 565.

⁽s) 7 B. & C. 2. t) 1 D. & R. 540. (u) See p. 380.

ordinary notice.(v) It may in the general terms of the act require the tenant in possession to appear, and to find such bail, if ordered by the court, and for such purposes as are specified in and by an act intituled, "An act for enabling landlords more speedily to recover possession of lands and tenements, unlawfully held over by the tenant?'(w) Or it may particularly set forth what proceedings (x)

will be had. (y)

It has been shown, that in general a declaration, Provisions whether on behalf of a landlord or any other per- of 1 W. IV., son, must be served before the first day in full term. But when a tenancy has expired, or a right of entry has accrued to a landlord, in or after Hilary or Trinity term, he may, under the statute 1 W. IV., c. 74, s. 36, at any time within ten days afterwards, serve a declaration in ejectment, specially entitled, of the day next after the day of the demise in such declaration, whether the same shall be in term or in vacation, with a notice thereunto subscribed, requiring the tenant in possession to appear and plead thereto within ten days. (z) A rule to plead is to be entered and given as in other cases, and no judgment signed against the casual ejector until default of such appearance, and there must be six clear days' notice of trial. Time to plead may be obtained on summons, and the trial may be postponed until the following assizes.

In general a landlord must make affidavit of the Moving for service of the declaration and notice, and move for judgment. judgment against the casual ejector as in ordinary But in the particular case of a holding over after the expiration of a written tenancy and demand in writing, the provisions of this statute may be had recourse to as to the production of the lease or agreement, and the affidavit of the execution thereof,

(v) 1 D. & R. 435. 5 B. & A. 849. 6 Moore, 56, a.

⁽w) See p. 380.

(x) See Tidd's forms.

(y) If there be any doubt upon the landlord's right thus to proceed, to require the tenant to find bail, it must not be adopted, because, if the lessor be non-suited in the merits, or a verdict pass against him, the decident is anticled to double costs. fendant is entitled to double costs.

⁽z) See form, p. 381.

and of the possession under the same, and of the expiration of the tenancy, and the demand of possession.(a)

Recognizance.

The statute further authorises the court, upon cause shown, or upon affidavit of service of rule, and no cause shown to make the rule absolute, in the whole or in part, (b) and to order the tenant within a time to be fixed to give such undertaking, and to find such bail, (usually for a sum sufficient to cover a year's annual value and £40. for costs,) with such conditions, and in such manner, as shall be specified in the rule absolute; and in case the tenant shall not comply, (or show ground for enlarging the time,) then, on affidavit of the service of such order, an absolute rule for judgment for plaintiff against the casual ejector shall be made.

Appearance.

If the tenant appear and show cause he gives the undertaking usually inserted in the consent rule, and finds bail pursuant to the order, usually to cover a year's value and £40. for costs. The recognizance is taken before a judge in town causes, or in the country, before a commissioner, and shall be entitled in the cause against the real defendant, (c)and must be put in suit within six months after the landlord has obtained possession. (d)

When undertaking given.

When the tenant has given the undertaking, and entered into his recognizances, the plaintiff's attorney must search the ejectment books at the judges' chambers in the queen's bench for the consent rule or agreement, which in that court is signed by the judge. (e)

Tenancy expiring, and or Trinity terms.

When the tenancy has expired, and the declarapiring, and served by a landlord in or after Hilary after Hilary or Trinity term, it has been shown that the tenant is to appear and plead within ten days, but may by summons and order of a judge obtain further time, and the rule to plead is to be entered as in other. cases.(f)

(a) See pp. 371—373. (b) 5 B. & A. 766. 1 D. & R. 433.

(f) See 1 W. IV., c. 70, s. 36.

⁽c) 6 Bing. 656. (d) See statute 1 G. IV., c. 87, s. 4—7; and see p. 370. (e) T. 1230.

In ordinary cases there must be ten days' notice of Notice of trial in ejectment as in other actions. But when the trial. tenancy has expired, or right of entry accrued, in or after either of the issuable terms, and a landlord has delivered a declaration in or after the term within ten days after his right of entry accrued, and with ten days' notice to appear and plead, then at least six clear days' notice of trial before the commission day at the assizes must be given, and the judges may postpone the trial to the next following assizes. (g)In all cases between landlord and tenant, in order to recover mesne profits, the plaintiff must on trial prove the service of the notice of trial.(h)

Formerly, in all cases if the tenant in possession Formerly, did not appear on the trial, the plaintiff was non- in possessuited for not confessing lease, entry, and ouster; but sion did not now, by 1 G. IV., c. 87, s. 2, in any ejectment by appear. landlord against tenant, if it shall appear (i.e., proved on the trial) that the tenant or his attorney had been served with due notice of trial, the plaintiff shall not be nonsuited, but production of the consent rule and undertaking of the defendant shall be sufficient evidence of lease, entry, and ouster. (i)

(g) 1 W. IV., c. 70, s. 36.
(h) 1 G. IV. c. 87, s. 2.
(i) See 1 G. IV., c. 87, s. 2. And this statute proceeds to enact, that Mesne prothe judge shall, whether the defendant shall appear on the trial or not, fits to tenant permit the plaintiff after proof to recover possession, to go into evidence of under this the mesne profits from the expiration of the tenancy down to the time of act. the verdict, or to some preceeding day, to be specially mentioned therein; and the jury are to find the verdict, as well for the recovery of the premises, as also to the amount of the damages to be paid for such mesne profits. But the landlord may bring an action of trespass for the mesne profits that shall accrue from the verdict, down to the day of delivering possession of the premises to the landlord.—See p. 370. The same section further orders, that the judge shall in all other cases make such order for staying execution, at the request of the defendant, in case he shall forthwith undertake to find; and on condition of his actually finding within four days from the day of the trial, security by the recognizance of himself and two sufficient sureties in such reasonable sum as the judge shall direct, conditioned not to commit any waste, wilful damage, or remove crops; and then it is provided that such recognizance shall cease to have effect if a writ of error be brought, and the plaintiff therein shall become bound with two sufficient sureties as required by 16. and 17 Car. 2, e. 8. (The landlord is entitled to the crops growing or cut after the expiration of the tenancy, and may seize or sue for the same, unless the tenant were entitled to the same as an away going crop.—1 Price's R. 53. 3 Bing. 11.)

Where a landlord has duly proceeded against a tenant for holding over Judgment. after the expiration of a tenancy constituted by writing, and after a written

Securities on writ of error.

Under the third section the defendant in ejectment must give two additional securities on bringing a writ of error, although he has already given the two sureties on his appearance under the first sec-

Execution.

1 W. IV. c.

70.

tion of the act. (j)This act enabling a landlord in certain cases to compel a tenant holding over, to give judgment of the preceding term, was the first provision, authorizing a plaintiff to have execution before the ensuing term, and was followed by the general provision 11 G. 1V., & in 11 G. 1V., and 1 W. IV., c. 70, s. 38, extending to all actions of ejectment; but by the 1 W. IV., o.7. still more extensive enactments in 1 W. IV., c. 7.

It is by section 2 of that statute enacted, that in all actions brought in either of her majesty's courts at law at Westminster, by whatever form of process the same may be commenced, it shall be lawful for the judge before whom any issue joined in such action shall be to be tried, in case the plaintiff or demandant therein shall become nonsuit or a verdict shall be given for the plaintiff, or demandant, defendant or tenant, to certify under his hand, on the back of the record, at any time before the end of the sittings or assizes, that in his opinion execution ought to issue in such action forthwith, or at some day to be named in such certificate, and subject, or not, to any condition or qualification, and in case of a verdict for the plaintiff, then either for the whole or for any part of the sum found by such verdict; in all which cases a rule for judment may be given, costs taxed, and judgment signed forthwith, and execution may be issued forthwith, or afterwards, according to the terms of

demand of possession, so as to compel him to give the before mentioned undertaking, that plaintiff shall, if he obtain a verdict, have judgment of the preceding term, the plaintiff may, under that statute, immediately after the verdict, proceed to sign judgment and issue execution, without waiting till the next term.—I G. IV., c. 87, s. 1. But the third section of that act enables the judge in such cases, who tries the cause, if he thinks the verdict where or executive to ender execution of the judgment to be

the verdict wrong or excessive, to order execution of the judgment to be stayed absolutely, till the fifth day of the next term.

(j) 6 Bing. 656. Before this act, in cases in the exchequer, the two bail in error in ejectment must have justified in double the improved rent, or value of the premises recovered.

Bail.

such certificate, on any day in vacation or term; and the postea, with such certificate as a part thereof, shall and may be entered of record, as of the day on which the judgment shall be signed, although the writ of distringas juratores or habeas corpora juratorum may not be returnable until after such day; provided always, that it shall be lawful for the party entitled to such judgment to postpone the signing thereof.

And it is enacted by section 3, that every judg- section 3. ment to be signed by virtue of this act, may be entered and recorded as the judgment of the court wherein the action shall be depending, although the court may not be sitting on the day of the signing thereof; and every execution issued by virtue of this act, shall and may bear teste on the day of issuing thereof; and such judgment and execution shall be as valid and effectual as if the same had been signed and recorded, and issued according to the course of

the common law.

And it is provided by section 4, that notwith- Section 4. standing any judgment signed or recorded, or execution issued by virtue of this act, it shall be lawful for the court in which the action shall have been brought, to order such judgment to be vacated, and execution to be stayed or set aside, and to enter an arrest of judgment, or grant a new trial, or new writ of inquiry, as justice may appear to require; and thereupon the party affected by such writ of execution, shall be restored to all that he may have lost thereby, in such manner as upon the reversal of a judgment by writ of error, or otherwise as the court may think fit to direct.

And it is provided by section 5, that nothing in section 5. this act contained shall be deemed to frustrate or make void any provision relating to the issuing of any writ of habere facias possessionem contained in the act passed in the first year of the reign of his then present majesty, intituled, "An act for the more effectual administration of justice in England and Wales."

1 & 2 Vict. o. 72.

By the recent statute of the 1st and 2nd Vict., c. 74,(k) intituled, "An Act to facilitate the Recovery of Possession of Tenements after due

Determination of the Tenancy."

Preamble.

or occupier exceed £20 a year, refases to give possession, may give him notice tion to proceed to recover posder the anthority of this act. Section 1.

If tenant to show cause why he does not give possession, the issue their warrant di-

After reciting that it was "expedient to provide for the more speedy and effectual recovery of the possession of premises unlawfully held over after the determination of the tenancy," it is enacted, Whentenant "That from and after the passing of this act, when of premises and so soon as the term or interest of the tenant of where there any house, land, or other corporeal hereditaments, is no rent, or held by him at will, or for any term not exceeding gent does not seven years, either without being liable to the payment of any rent, or at a rent not exceeding the rate of twenty pounds a year, and upon which no fine the landlord shall have been reserved or made payable, shall have ended, or shall have been duly determined by of his inten- a legal notice to quit or otherwise, and such tenant or (if such tenant do not actually occupy the precover pos-session, un mises, or only occupy a part thereof,) any person by whom the same, or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively, it shall be lawful for the landlord of the said premises, or his agent, to cause the person so neglecting or refusing to quit and deliver up possession, to be served (in the manner thereinafter mentioned) with a written notice, in the form set forth in the schedule to this act, signed by the said landlord or his agent, of his intention to proceed to recover possession under the authority and according to the mode prescribed in this act; and if the tenant or occupier shall not does not appear at the time and place appointed, and show to the satisfaction of the justices hereinafter mentioned, reasonable cause why possession should not be given under the provisions of this act, justices may and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which recting the he is then in possession, to the said landlord or his

(k) This act received the royal assent on the 10th of August, 1838.

agent, it shall be lawful for such landlord or agent to constables give to such justices proof of the holding, and of the landlord end or other determination of the tenancy, with the possessiontime or manner thereof, and where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession; and upon proof of service of the notice, and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for the justices acting for the district, division, or place, within which the said premises, or any part thereof shall be situate, in petty sessions assembled, or any two of them, to issue a warrant under their hands and seals to the constables and peace officers of the district, division, or place within which the said premises, or any part thereof shall be situate, commanding them, within a period to be therein named, not less than twentyone, nor more than thirty clear days from the date of such warrant, to enter (by force if needful) into the premises, and give possession of the same to such landlord or agent: provided always, that entry upon any such warrant shall not be made on a Sunday, Good Friday, or Christmas-day, or at any time except between the hours of nine in the morning and four in the afternoon: provided also, that nothing herein contained shall be deemed to protect any person on whose application, and to whom any such warrant shall be granted, from any action which may be brought against him by any such tenant or occupier, for or in respect of such entry and taking possession, where such person had not, at the time of granting the same, lawful right to the possession of the same premises: provided also, that nothing herein contained shall affect any rights to which any person may be entitled as out-going tenant by the custom of the country or otherwise."

And by section 2 it is enacted, "That such notice The manner of application intended to be made under this act in which summay be served either personally or by leaving the mons shall be served. same with some person being in, and apparently Section 2. residing at, the place of abode of the person so

holding over as aforesaid; and that the person serving the same shall read over the same to the person served, or with whom the same shall be left, as aforesaid, and explain the purport and intent thereof: provided that if the person so holding over cannot be found, and the place of abode of such person shall either not be known, or admission thereto cannot be obtained, for serving such summons, the posting up of the said summons on some conspicuous part of the premises so held over shall be deemed to be good service upon such person."

How execube stayed. Section 3.

And by section 3 it is enacted, "That in every rants of pos. case in which the person to whom any such warrant session may shall be granted had not, at the time of granting the same, lawful right to the possession of the premises, the obtaining of any such warrant as aforesaid shall be deemed a trespass by him against the tenant or occupier of the premises, although no entry shall be made by virtue of the warrant; and in case any such tenant or occupier will become bound with two sureties as hereinafter provided, to be approved of by the said justices, in such sum as to them shall seem reasonable, regard being had to the value of the premises, and to the probable costs of an action, to sue the person to whom such warrant was granted with effect and without delay, and to pay all the costs of the proceeding in such action in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action, or become non-suit therein, execution of the warrant shall be delayed until judgment shall have been given in such action of trespass; and if, upon the trial of such action of trespass, a verdict shall pass for the plaintiff, such verdict and judgment thereupon shall supersede the warrant so granted, and the plaintiff shall be entitled to double costs in the said action of trespass."

Proceedings in actions of trespass. Section 4.

And by section 4 it is enacted, "That every such. on the bond bond as hereinbefore mentioned shall be made to the said landlord or his agent, at the costs of such landlord or agent, and shall be approved of and. signed by the said justices; and if the bond so taken be forfeited, or if, upon the trial of the action for securing the trial of which such bond was given, the judge by whom it shall be tried shall not indorse upon the record in court that the condition of the bond hath been fulfilled, the party to whom the bond shall have been so made may bring an action, and recover thereon: provided always, that the court where such action as last aforesaid shall be brought, may, by a rule of court, give such relief to the parties upon such bond as may be agreeable to justice, and such rule shall have the nature and effect of a defeazance to such bond."

And by section 5 it is enacted, "That it shall not Protection be lawful to bring any action or prosecution against of justices, constables, the said justices by whom such warrant as aforesaid &c. shall have been issued, or against any constable or peace officer by whom such warrant may be executed, for issuing such warrant, or executing the same respectively, by reason that the person, on whose application the same shall be granted, had not lawful right to the possession of the premises."

And by section 6 it is enacted, "That where the Where landlandlord, at the time of applying for such warrant lawful title, as aforesaid, had lawful right to the possession of he shall not be deemed a the premises, or of the part thereof so held over as trespasser aforesaid, neither the said landlord nor his agent, by reason of nor any other person acting in his behalf, shall be but be liable deemed to be a trespasser by reason merely of any in an action irregularity or informality in the mode of any on the case irregularity or informality in the mode of proceed- for special ing for obtaining possession under the authority of damage prothis act; but the party aggrieved may, if he think irregularity. fit, bring an action on the case for such irregularity or informality, in which the damage alleged to be sustained thereby shall be specially laid, and may recover full satisfaction for such special damage, with costs of suit: provided, that if the special damage so laid be not proved, the defendant shall be entitled to a verdict; and that if proved, but assessed by the jury at any sum not exceeding five shillings, the plaintiff shall recover no more costs

than damages, unless the judge, before whom the trial shall have been held, shall certify upon the back of the record that in his opinion full costs ought to be allowed."

Interpretation clause.

And by section 7 it is enacted, "That in construing this act the word "premises" shall be taken to signify lands, houses, or other corporeal hereditaments; and that the word "person" shall be taken to comprehend a body politic, corporate, or collegiate, as well as an individual; and that every word importing the singular number shall, where necessary to give full effect to the enactments herein contained, be deemed to extend and be applied to several persons or things, as well as one person or thing; and that every word importing the masculine gender shall, where necessary, extend and be applied to a female as well as a male; and that the term "landlord" shall be understood as signifying the person entitled to the immediate reversion of the premises, or, if the property be held in joint tenancy, coparcenary, or tenancy in common, shall be understood as signifying any one of the persons entitled to such reversion; and that the word "agent" shall be taken to signify any person usually employed by the landlord in the letting of the premises, or in the collection of the rents thereof, or specially authorized to act in the particular matter by writing under the hand of such landlord."(1)

THE SCHEDULE TO WHICH THE STATUTE REFERS.

(1.)

"Notice of Owner's Intention to apply to Justices to recover Possession.

Notice.

"I, —, [owner, exagent to —, the owner, as the case may be,] do hereby give you notice, that unless peaceable possession of the tenement, shortly describing it,] situate —, which was held of me,

(1) By section 8, the act is not to extend to Scotland.

or. of the said ----, [as the case may be,] under a tenency from year to year, or [as the case may be] which expired [or was determined] by notice to quit from the said —, or otherwise, [as the case may be,] on the —— day of ——, and which tenement is now held over and detained from the said —— be given to ——, [the owner or agent,] on or before the expiration of seven clear days from the service of this notice, I, ____, shall, on ____ next, the — day of —, at — of the clock of the same day, at ----, apply to her majesty's justices of the peace acting for the district of —— [being the district, division, or place, in which the said tenement, or any part thereof, is situate,] in petty sessions assembled, to issue their warrant directing the constables of the said district to enter and take possession of the said tenement, and to eject any person therefrom.

Dated this To Mr.

(Signed) [Owner or agent.]

(2.)

"Complaint before two Justices.(m)

"The complaint of —, [owner or agent, &c., as complaint. the case may be,] made before us, two of her majesty's justices of the peace, acting for the district of —, in petty sessions assembled, who saith that the said — did let to — a tenement, consisting of —, for —, under the rent of —, and that the said tenancy expired [or was determined by notice to quit, given by the said —, as the case may be] on the — day of — ; and that on the — day of — the said — did serve on — [the tenant overholding] a notice in writing of his intention to apply to recover possession of the said tenement, (a duplicate of which notice is hereto annexed,) by giving, &c. [describing the mode in which the service was effected]; and that,

⁽m) "A duplicate of the notice of intention to apply is to be annexed to this complaint."

notwithstanding the said notice, the said —— refused [or neglected] to deliver up possession of the said tenement, and still detains the same.

Taken the —— day of —— before us, (Signed)

(3.)

"" Warrant to peace Officers to take and give Possession.

Warrant

"Whereas, [set forth the complaint,] we, two of her majesty's justices of the peace, in petty sessions assembled, acting for the _____ of ____, do authorize and command you, on any day within _____ days from the date hereof, [except on Sunday, Christmas Day, and Good Friday, to be added if necessary,] between the hours of nine in the forenoon and four in the afternoon, to enter, (by force, if needful,) and with or without the aid of _____, the owner or agent, [as the case may be,] or any other person or persons whom you may think requisite to call to your assistance, into and upon the said tenement, and to eject thereout any person, and of the said tenement full and peaceable possession to deliver to the said ____ [the owner or agent].

Given under our hands and seals this —— day

of—

To —— and all other consta- bles and peace officers acting for the —— district of ——."

EVIDENCE BETWEEN LANDLORD AND TENANT AT TRIAL.

Evidence.

The proofs by which a claimant in ejectment is required to support his claim, not only vary with the nature of his title(n) to the premises, but are also

Cases.

(n) The following is a summary of the cases as to general evidence of title:—

A tenant in possession is not a good witness to support his landlord's title, because it is to uphold his own possession.—Doe d. Foster v. Williams, Cowp. 621. Nor to prove anything connected with such title.—Doe

dependent upon the position in which he is placed with respect to the defendant. When no privity Privity. has existed between the parties; that is to say, when neither the defendant nor those under whom he holds have been immediately or derivatively admitted into possession, either by the lessor of the plaintiff himself, or those under whom he claims, the lessor must establish a legal and possessory title to the premises, because it is by the strength of his own title, and not by the weakness of his adversary's, that he must prevail. But when there has been a privity between the parties, as when the relation of landlord and tenant has subsisted between them, or where the defendant has been admitted into possession pending a treaty for a purchase, or on other grounds, proof of title is not required, but instead thereof the lessor should prove that the defendant, or those under whom he holds, (o) were so admitted into possession, and that their right to the possession has ceased; together also when the privity is not between the immediate parties to the action, with the derivative title of the claimant from the party by whom the defendant was originally admitted into possession.(p) And the defendant will not be per-

d. Winckley v. Pye, 1 Esp. 364. Where a witness on the voir dire stated, "that the lessor of the plaintiff had formerly assigned the premises in question to him, for the purpose of protecting him from impressment, that he had given back the deed to the lessor of the plaintiff, and never seen it since, and that he never had any possession or beneficial interest on the premises; it was held that he was incompetent, as he had a direct interest in supporting the plaintiff's action.—Doe d. Scales v. Bragg, R. & M. 87. In ejectment on several demises of two persons, although the evidence shows the title to be exclusively in one of them, the other cannot be compelled to be examined as a witness for the defendant.—Fenn d. Pewtriss v. Granger, 3 Camp. 177. The admission of a lessor in ejectment, on the several demises of two persons, are admissible, though the evidence shows the title to be exclusively in the other of them.—Norden v. Williamson, 1 Taunt. 378. The declarations of a deceased occupier of land, of whom he held the land, are evidence of the seisin of that person.—Peaceable d. Uncle v. Watson, 1 Taunt. 378. But it must be first shown that the land the deceased occupied, was the land now in the tenant's possession.—Id. A joint demise by husband and wife of land, of which he is seized in her right, is disproved by evidence of a receipt for rent given by the husband only.—Parry v. Hindle, 2 Taunt. 180. The nominal plaintiff in ejectment cannot recover upon a joint demise by persons who, upon the evidence, appear to be tenants in common.—Doe d. Pool v. Errington, 3 Nev. & M. 646. 1 Adol. & Ellis, 750.

⁽o) Barwick d. Mayor of Richmond v. Thompson, 7 T. R. 488.
(p) Doe d. Biddle v. Abrahams, 1 Stark. 306. Rennie v. Robinson, 1 Bing. 147.

Privity.

mitted to rebut this evidence, by showing that the title of the claimant was originally defective and insufficient, for it would be contrary to good faith to permit a party to controvert the title of him by whom he has obtained possession; (q) but he is allowed notwithstanding to prove the nature of such title, and to show, that although originally a valid one, it expired before the commencement of the action, and that the land then belonged to another, for such a defence is not inconsistent with the terms of the original possession. (r)

Proof of privity.

When a privity exists, the claimant, instead of proving his title, must show the existence and termination of the privity; for a privity will not be presumed to exist without proof, but being proved the presumption is in favour of its continuance. Thus if the defendant be let into possession, pending a negotiation for a lease, proof must be given that he was so let into possession, and that the negotiation was broken off before the day of the demise in the ejectment. In like manner if he has become tenant at will of the premises, the lessor must show how he became so, and that the will was determined by demand of possession or otherwise.

Relation of landlord and tenant.

When the relation of landlord and tenant regularly subsists between the parties, or those under whom they claim, which is commonly the case in ejectments of this nature, the tenancy may be determined three several ways as before shown. (8) When the tenancy is determined by efflux of time, if the demise be by deed or other writing, the lessor has only to prove the counterpart of the lease by one of the subscribing witnesses; and it is not necessary that he should have given notice to the tenant to produce the original lease to enable him so to do. (t) If there is no counterpart, notice to produce the original lease should be given, and then, but not otherwise, the claimant will be entitled,

⁽q) Doe d. Pritchett v. Mitchell, 1 B. & B. 11. (r) See Phillips v Pearce, 5 B. & C. 433.

⁽s) See p. 363. (t) Roe d. West v. Davis, 7 East, 363.

if the original lease be not produced to give secondary evidence of its contents. If the demise be by Parol deparol, the agreement may be proved by any person mise. present at the making of it; but if it should appear on the trial by the witnesses on the part of the plaintiff, that a written agreement has at any time been drawn up between the lessor and the party under whom the defendant came into possession, it must be produced by the plaintiff. (u) It is not necessary for the lessor to prove, that he or those under whom he claims, has received the reserved rent within the last twenty years.(v)

When the tenancy is determined by the happening Determinaof a particular event, the lessor must of course also tion of teprove that the event upon which the tenancy is to contingency

determine has happened.

Where the tenancy expires by reason of a notice Expiration to quit, the lessor must prove the tenancy of the of tenancy defendant, the service of the notice and its con-quit. tents, (and if given by an agent the agent's authority,) and that the notice and the year of the tenancy expire at the same time. When also the notice is for a shorter period than half a year, or expires at any other period than the end of the year of the tenancy, it will be necessary to show the custom of the country where the lands lie, or an express agreement by which such notice is authorised.

The tenancy of the defendant is commonly ad-Tenancy mitted, and may be proved when necessary, if no admitted. direct evidence can be given of the demise, by declarations on the part of the tenant, and the fact of payment of rent, (w) or the like.

The service of the notice and the authority to Service of serve it, will be proved by the person who delivered it to the tenant; but if there is a subscribing witness thereto, such subscribing witness must also be called, (x) although it should happen that he only

(u) Fenn d. Thomas v. Griffith.
(v) See Runn. Eject., appendix, 458. Orrell v. Maddox.
(w) Notice should be given to the tenant to produce his receipts.
(x) Doe d. Sykes v. Durnford, 2 M. & S. 62.

witnessed the signature of the landlord, and did not deliver the notice himself. The contents of the notice may be proved by a duplicate of the original, which should be compared with the notice actually served by the party serving it; but if this precaution is not taken, parol evidence may be given of its contents; and it is not necessary in either case to give the defendant notice to produce the original in his possession. (y)

Notice by agent.

When the notice is given by an agent, it must be shown that he was vested with his authority at the time the notice was given. And where two or more joint tenants, &c., are lessors of the plaintiff, and a notice to quit is given by one or more in the name of all, although they all afterwards join in an ejectment it will not be presumed from that circumstance that an authority was originally given by the parties, not joining in the notice to their co-tenants. (z)

Tenant being in possession.

When the tenant has been long in possession of the premises, it frequently becomes extremely difficult to prove the time of his original entry; but nevertheless some evidence must be given, from which the jury may presume that the time of the expiration of the notice and of the year of the tenancy are the same, or the plaintiff will be nonsuited.

Acknow- 🔀 terms.

If the tenant has been applied to by his landlord ledgment by respecting the time of the commencement of his tenant, and assent to the tenancy, and has informed him that it began on a certain day, and in consequence of such information a notice to quit on that day is given at a subsequent period, the evidence is conclusive upon the tenant, and he will not be permitted to prove, that in point of fact the tenancy has a different commencement; nor is it material whether the information be the result of design or ignorance, as the landlord is in both instances equally led into error.(a) When also the tenant at the time of the service of the

(y) Jory v. Orchard, 2 B. & P. 41.

(a) Doe d. Eyre r. Lambley, 2 Esp. 635.

⁽z) But where a notice to quit was given by the steward of a corporation, it was presumed, inasmuch as he was an officer of the corporation, that he had an authority to give the notice.—Roe d. Dean of Rochester v. Pearce, 2 Camp. 96.

notice assents to the terms of it, he will be precluded from showing that it expires at a wrong time.

But such assent must be strictly proved.(b)

When a notice to quit upon any particular day is When no objection served upon the tenant personally, if he read its made to contents, or they be explained to him without any notice. objection being made on his part as to the time of the expiration of the notice, it will be prima facie evidence of a holding from the day mentioned in the notice. (c)

In like manner a receipt for a year's rent up to a Receipts for particular day, is prima facie evidence of a holding rent. from that day. (d) But if the notice be not delivered personally, or be not read over or explained to the party, no such presumption will arise, although a contrary doctrine was formerly maintained. (e) When also the notice is to quit generally at the expiration of the current year of the tenancy, &c., no presumption can arise as to the time of the commencement of the tenancy, from a personal delivery to the tenant. (f)

(c) Doe d. Leicester v. Biggs, 2 Taunt. 109.
(d) Doe d. Castleton v. Samuel, 5 Esp. 174.
(e) Doe d. Puddicombe v. Harris, 1 T. R. 161. Doe d. Ash v. Calvert,

⁽b) As, where the party made no objection to the notice at the time of its delivery, but said, "I pay rent enough already; it is hard to use me thus." In this case the tenant was not debarred from showing the actual commencement.—4 T. R. 461.

² Camp. 387.

(f) But when a general notice was delivered on the 22nd of March, to quit at the expiration of the current year, and on the 16th of January following a declaration in ejectment was delivered to the tenant, laying the demise on the 1st of November, and the tenant, on the receipt of this declaration, made no objection to the notice to quit, nor set up any right to the possession of the premises, but said he should go out as soon as he could suit himself with another house; it was ruled by Lord Ellenborough, C. J., that the defendant's declaration, when served with the ejectment, was evidence to go to the jury, whether the holding was a Michaelmas holding, and the jury found a verdict for the landlord.—Doe d. Puddicombe v. Harris, 1 T. R. 161. Doe d. Ash v. Calvert, 2 Camp. 387. And in a case where the notice was delivered on the 27th of September, to quit "at the expiration of the term for which you hold the same," which notice was served personally upon the tenant, who observed, "I hope Mr. M. does not mean to turn me out." Holroyd, J., permitted the lessor to prove that it was the general custom in that part of the country. lessor to prove that it was the general custom in that part of the country, where the demised lands lay, to let the same from Lady-day to Lady-day, and that the defendant's rent was due at Michaelmas and Lady-day respectively, and directed the jury to presume that this tenancy, like other tenancies in that part of the country, was a tenancy from Lady-day to Lady-day.—Doe d. Milnes v. Lamb, Nottingham Summer Assizes, 1817, MS. See Ad. on Ejectment, 277.

Ejectment upon clause of re-entry.

When the ejectment is brought upon a clause of re-entry for nonpayment of rent, if the proceedings are at common law, the lessor must prove the lease or counterpart, (g) and that the rent has been demanded with all the formalities.(h) If the case falls within the provisions of the statute 4 G. II., c. 28, instead of proving a demand of rent, he must show that six months' rent is in arrear, and that there is not a sufficient distress upon the premises.(i) It is not necessary that the amount of rent proved to be due should correspond with the amount stated in the particulars of breaches delivered by the plaintiff.(j) When the ejectment is for the breach of any other covenant, the lessor must show the covenant broken by the same evidence as in an action of covenant; and if he has been ordered by the court to give to the tenant particulars of the breaches upon which he means to rely, he will be precluded from giving in evidence different breaches from those contained in the particulars.

Ejectment, when right of entry for When there is a right of entry given for an assigning or underletting, if a person is found in the

land ready to pay it.—1 Saund. 287, n. 16.
(i) See p. 363.
(j) Tenny d. Gibbs v. Moody, 3 Bing. 3.

⁽g) Roe d. West v. Davis, 7 East, 363.

(h) First, a demand of the rent must be made either in person or by an agent properly authorised.—Roe d. West v. Davis, 7 East, 363. Secondly, the demand must be of the precise rent due, (that is, of the precise rent due, by the non-payment whereof the forfeiture will be incurred, as a quarter's rent, if the rent be payable quarterly; half a year's rent, if payable half yearly, and so forth; and if there be any previous arrears of rent, and the rent demanded include such arrears, it will not be sufficient to work a forfeiture.—Doe d. Wheeldon v. Paul, 3 C. & P. 613. Thirdly, it must be made precisely on the day when the rent is due and payable by the lease, to save the forfeiture; as, when the proviso is, "That if the rent shall be behind and unpaid by the space of thirty or any other number of days after the day of payment, it shall be lawful for the lessor to re-enter;" a demand must be made on the 30th or other last day. Fourthly, it must be made a convenient time before sunset, (according to the case of Doe d. Wheeldon v. Paul, 3 C. & P. 613, the demand ought to be made at the last hour of the day, at sunset). Fifthly, it must be made upon the land, and at the most notorious place of it; therefore, if there be a dwelling house upon the land, the demand must be at the front or fore door, though it is not necessary to enter into the house, notwithstanding the door be open; but if the tenant meet the lessor either on or off the land at any time of the last day of payment, and tender the rent, it is sufficient to save a forfeiture, for the law leans against forfeiture. Sixthly, unless a place is appointed when the rent is payable, in which case the demand must be made at such place. Seventhly, a demand of the rent must be made, in fact, although there should be no person on the land ready to pay it.—I Saund. 287, n. 16.

premises appearing as the tenant, it is prima facie assigning, evidence of an underletting sufficient to call upon the defendant to show in what character such person was in possession, as tenant or servant to the lessee; and that the declarations of such person were admissable evidence against the lessee. (k)is not sufficient to prove the defendant a stranger in possession of the demised premises, and his declaration that they were demised to him by another stranger. (l)

When a claimant is the assignee of the reversion, When claimafter proving the forfeiture, evidence must be given ant is asthat he was entitled to the reversion at the time reversion. the forfeiture was committed, and if possible of the mesne assignments from the original lessor. mesne assignments, however, will be presumed, if the original lease be for a long term, and the possession of the assignee has continued for a consi-

derable time. (m)

As to the evidence on the part of the defendant, Evidence on it is sufficient to observe generally, that the evidence the defendon his part entirely depends on the nature of the ant. proofs advanced by the plaintiff's lessor, and need in no case be extended beyond the rebuttal of them. The principle that a claimant in ejectment must recover on the strength of his own title is now so clearly established, that little can be said respecting the evidence necessary on the part of the defendant. The lessor of the plaintiff must always in the first instance make out a clear and substantial possessory title to the premises in question, and the defendant's evidence is altogether confined to falsifying his adversary's proofs, or rebutting the presumption that may arise out of it.(n) He needs not show that he has himself any claim whatever to the premises, nor even give evidence of a title in a third person: it is sufficient if he make it appear to the

the part of

(m) Earl d. Goodwin v. Baxi (n) See Ad. on Ej., chap. 10.

⁽k) Doe d. Hindley v. Rickerby, 5 Esp. 4.
(l) Doe v. Payne, 1 Stark. 86. And such evidence would not be sufficient, even if the tenant had covenanted to part with the possession.

(m) Earl d. Goodwin v. Baxter, Bik. 1228.

jury, that a legal and possessory title does not subsist in the plaintiff's lessor.(0)

MISCELLANEOUS OBSERVATIONS AND CASES ON THE ACTION OF BJECTMENT GENERALLY.(p)

Title.

In ejectment, the person having the legal title must prevail.(q) Even in the case of an ejectment

evidence

General rule (o) Either party, after plea pleaded, and a reasonable time before trial, as to the ad- may give notice to the other, either in town or country, in the form given, mission of or to the like effect, of his intention to adduce in evidence certain written or printed documents; and unless the adverse party shall consent by inprior to trial. dorsement on such notice, within forty-eight hours, to make the admission specified, the party requiring such admission may call on the party required by summons to show cause before a judge why he should not consent to such admission, or, in case of refusal, be subject to pay the costs of proof; and unless the party required shall expressly consent to make such admission, the judge shall, if he think the application reasonable, make an order that the costs of proving any document specified in the notice, which shall be proved at the trial to the satisfaction of the judge or other presiding officer, certified by his indorsement thereon, shall be paid by the party so required, whatever may be the result of the cause.

—Reg. Gen., K. B., C. P., and Exch. Hil. T., 4 W. IV.

(p) By 3 and 4 W. IV., c. 27, a. 2, it is enacted, "That after the 31st

Limitation acL

3&4W.IV., (p) By 3 and 4 W. IV., c. 2/, a. 2, 16 15 cimeses, and day of December, 1833, no person shall make un entry or distress, or bring the day of December, 1833, no person shall make un entry or distress, or bring the but within twenty years next after an action to recover any land or rent, but within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have accrued, or some person through whom he claims; or if such right shall not have accrued, to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same."

Section 16. Disabilities.

And it is by section 16 provided and further enacted, " That if, at the time at which the right of any person to make an entry or distress, or bring an action to recover any land or rent, shall bave first accrued as aforesaid, such person shall have been under any of the disabilities hereinafter mentioned, (that is to say,) infancy, coverture, idiotoy, lanacy, unsoundness of mind, or absence beyond seas, then such person, or the person claiming through him, may, notwithstanding the period of such twenty years hereinbefore limited shall have expired, make an entry or distress, or bring an action to recover such land or rent, at any time within ten years next after the time at which the person to whom such right shall have first accrued as aforesaid, shall have ceased to be under any such disability, or shall have died (which shall have first happened).

Section 17. But no action after forty years.

And it is by section 17 provided, nevertheless, and further enacted, "That no entry, distress, or action, shall be made or brought by any person who, at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent, shall have first accrued, shall be under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within forty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such forty years, or although the term of ten years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired."

(4) Doe d. Da Costa v. Wharton, 8 T. R. 2. S P. Goodtitle d. Jones v. Jones, 7 T. R 47. Doe d. Hodson v. Steple, 2 T. R. 684; and see Roe d. Eberall v. Lowe, 1 H. Black. 447.

brought by a trustee against his cestui que trust.(r) The trustee of a term to satisfy creditors, not having notice of an agreement for a lease before the grant of the term, may maintain an ejectment against the tenant in possession under the agreement.(s) Prior possession, however short, is a sufficient Prior posprima facie title in ejectment against a wrong session. doer.(t)Possession for many years, under a deed declaratory of a beneficial interest, in which a covenant to convey the legal estate is inserted, will not raise a presumption that such estate has been conveyed to the possessors, nor entitle them to bring an ejectment.(u) There can be no defence by claiming under an estate which makes part of the title of the lessor of the plaintiff.(v) The nominal plaintiff in ejectment cannot recover upon a joint/ denise by persons who, upon the evidence, appear to be tenants in common. (w) The usual entry in cases of vacant possession will, in certain cases, beli dispensed with.(x) Where a rent charge is granted with power to the grantee, in case the rent should be in arrear for a certain space of time, to enter and enjoy the lands charged, and to receive and take the rents, issues, and profits, for his own use and benefit, until satisfaction of the arrears of rent with all costs:—the grantee may, upon the rent becoming in arrear, maintain ejectment against the tertenant without proof, or previous demand of the In ejectment, evidence that the lessor of rent.(y) the plaintiff received rent for the premises from A., who formerly occupied them, and also from the parish officers, is admissible, although the defendant

(r) Roe d. Read v. Reade, 8 T. R. 122. Weakley d. Yea v. Rogers, 5 East, 138, n.

⁽s) Goodtitle d. Estwick v. Way, 1 T. R. 735.

(t) Doe d. Hughes v. Dyeball, M. & M. 346. 3 C. & P. 610. If, in an ejectment, it be proved that the lessor of the plaintiff let the locus in quo to a tenant who held peaceable possession for about a year, this is sufficient evidence of title; as, against a party who came in the night, and forcibly turned such tenant out of possession.—Id.

⁽u) Goodright v. Swymmer, 1 Ld. Ken. 385. (v) Hart v. Knott, Cowp. 46.

⁽w) Doe d. Pool v. Errington, 3 Nev. & M. 646. 1 Adol. & Ellis, 750.

⁽x) Doe d. Frith v. Roe, 2 Dowl. P. C. 431. (y) Doe d. Brass v. Horsley, 3 Nev. & M. 567.

Mortgagor.

does not claim under A., or the parish officers. (z)In ejectment, on the several demises of a mortgagor and mortgagee, the defendant offered to prove that seven or eight years back, and after the execution of the mortgage, he brought ejectment against the mortgagor (at that time in possession) that the cause was referred to arbitration, and that the award was in favour of the now defendant, who thereupon entered under a writ of possession, and had occupied the premises ever since; it was held that these proceedings were not admissible evidence of the defendant against the mortgagee, although he was present at one meeting before the arbitrator, it not appearing that he took any part in the proceedings.(a) If a lessor, who has only an equitable title, grants a lease, he has, as against his lessee, a good title by estoppel; but if after the lease, the lessor, by a mortgage deed, grant all his interest in law and in equity to a mortgagee, the lessee may give in evidence this deed, and thus prevent the lessor from recovering in ejectment on a forfeiture A consent rule in an ejectment of the lease.(b)for lands and mines, by which the party appeared to defend for "a certain tin-bound (setting out its abuttals) containing a certain mine," &c., was held insufficient, on the ground that ejectment will not lie for a tin-bound.(c)

The statute 59 G. III., c. 12, s. 17, empowers churchwardens and overseers to take lands and hereditaments in the nature of a body corporate, and declares, that in all actions brought in respect thereof, it shall be sufficient to name the churchwardens and overseers for the time being, describing them as the churchwardens and overseers of the poor of the parish for which they shall act, and naming such parish; where a declaration in eject-

⁽z) Doe d. Lichfield (Earl) v. Stacey, 6 C. & P. 139. See note to p. 624,

as to general evidence.

(a) Doe d. Smith v. Webber, I Adol. & Ellis, 119.

(b) Doe d. Marriott v. Edwards, 6 C. & P. 208.

(c) The defence should be for the mine which the defendant was working under the tin-bound.—Falmouth (Earl) v. Alderson, 1 Mees. & Wels.

210. 4 Dowl. P. C. 701.

ment by churchwardens and overseers, contained two sets of counts, one describing them by their office without their names, and the other by their names without their office; it was held the objection, if any, was cured after verdict. (d) If a person be named in the declaration as one of the lessors of the plaintiff without his authority, the party served with the declaration may before appearance move the court to have such party's name struck out of the declaration.(e) When the plaintiff obtained a verdict in a court, on a supposed demise by a party without his authority, and without his concurring in the action, the court set aside the verdict. (f). A receiver cannot proceed in ejectment.(g)the name of the tenant in possession was inserted at the commencement of a declaration by mistake, instead of that of the casual ejector, (the proceedings in other respects being regular,) the court granted a rule for judgment upon the common affidavit of service, and suggested that if the tenant did not appear, an application should be made to amend.(h) When a declaration was entitled, "Doe on the demise of A. and B. v. B.," and the affidavit of service was entituled, "Doe on the demise of B. and A.v. B.," the court, notwithstanding the variance between the arrangement of the lessors' names, gave judgment againt the casual ejector. (i) attorney cannot be a lessor in ejectment. (j) plaintiff is entitled to recover in ejectment, although the defendant in possession is the servant of another.(k) A mere servant of a beneficial occupier Servant in cannot be made defendant in an ejectment; but possession. where a servant in the visible occupation of pre-

⁽d) Doe d. Orleton v. Harpur, 2 D. & R. 708.
(e) Doe d. Shepherd v. Roe, 2 Chit. 171.
(f) Doe d. Hammeck v. Filles, 2 Chit. 170.
(g) Wynn v. Newborough, 3 Bro. C. C. 88. And where a receiver is in possession, an ejectment cannot be brought without leave of the court.—
Angel v. Smith, 9 Ves. jun. 335.

(h) Doe d. Cobbey v. Roe, Ad. Eject., 198; and see Chitty, 573, n. 2
Chit. 173.

(i) Doe d. Worthington v. Butcher, 2 Chit. 174.

(j) Reg. Gen. K. B., 2 Doug. 466, n.

(k) Doe d. Cuff v. Stradling, 2 Stark. 187.

mises assumes the character of tenant in possession, he is liable to be made defendant, and his conduct is evidence to go to the jury, to presume that he is tenant in possession, unless the fact is rebutted by other evidence.(1) To found a motion for judgment against the casual ejector, a declaration entitled thus, "In the common pleas, June 12, 1834," will suffice, notwithstanding the 15th rule of M. T. 3 W. IV., does not apply to actions of ejectment. (m) The court refused to set aside a declaration in ejectment, in which the notice was dated on a day after the service of the declaration.(n)

Demise. entry, and ouster.

The same precision and exactness is not necessary in a declaration in ejectment as in a precipe.(o) In ejectment on the demise of an heir by descent, the demise was laid on the day his ancestor died, and held well enough after verdict. (p) Where the lessors of the plaintiff are a corporation, the demise must be stated to be by deed, but it need not be proved.(q) Where an entry is necessary the demise must be laid after it.(r)

An ejectment by the assignees upon a demise laid after the act of backruptcy, but before the bargain and sale, was adjudged ill.(s) Actual ouster does not mean putting out by force of hand proved in evidence; but holding over by such possession as must have been adverse to the tenancy, is full presumptive evidence of actual ouster.(t)

(1) Doe d. James v. Staunton, 1 Chitt. 119. 2 B. & A. 371. S. P. Gul-

liver v. Swift, 2 Ld. Ken. 511.

(m) Doe d. Ashman v. Roe, 1 Scott, 166. I Bing. N. R. 253. A declaration in ejectment entitled by mistake of T. T., 6 W. IV., instead of 5 W. IV., dated August 1, 1835, was held sufficient to warrant a rule for judgment against the casual ejector.—Doe d. Smithers v. Roe, 4 Dowl.

(a) Doe d. Evans v. Roe, Adol. & Ellis, 11. The rule of court, M. T., 3 W. IV., that every declaration shall be entitled of the day of the month and year in which it is filed and delivered, does not apply to declarations in ejectment.—Id.

(o) Connor v. West, 5 Burr. 2672.

(p) Roe d. Wrangham v. Hersey, l Wils. 274.

(q) Furley d. Canterbury (Mayor) v. Wood, l Esp. 199.

(r) Doe d. Compere v. Hicks, 7 T. R. 433, 727. But where the plaintiff's lessor entered, and afterwards levied a fine, and then an ejectment was brought, and the demise laid before the fine, it was held well enough.—Musgrave d. Hilton v. Shelley, 1 Wils, 214.

(s) Doe d. Esdaile v. Mitchell, 2 M. & S. 446. 2 Rose, 265. (t) Taylor v. Fisher, Lofft, 766.

The damages in ejectment (except between land-Damages. lord and tenant) is nominal; the remedy therefore is for the recovery of the loss of possession termed mesne profits, (u) is by action at law, in which action the plaintiff complains of his ejectment and loss of possession; states the time during which the defendant (the real tenant) held the lands and took the rents and profits, and prays judgment for the

damages which he has thereby sustained.(v)

This action may be brought by way of trespass Trespass for for mesne profits, (including the costs of the eject- mesne proment,) in the name of the lessee against the tenant in possession, after judgment by default. (w) joint action for *mesne* profits may be supported by several lessors of a plaintiff in ejectment after a recovery therein, although there were only separate demises by each. (x) An action for *mesne* profits lies when one tenant in common recovers against another in ejectment by default. (y) No action for mesne profits lies against an executor. (z)

Where an ejectment is defended and the plaintiff

(w) See Reev. E. L., 4 vol., 169. Ad. on Eject., chap. 15.

(v) This action is partly superseded when the relation of landlord and Mesne protenant has subsisted between the parties to the ejectment; but the provisits between sions of the statute 1 G. IV., c. 87, (see p. 368,) which enables landlords to landlord and recover in that action the mesne profits accruing from the day of the demise in the declaration,) to the day of the trial, or some preceding day. But this mode of recovering the mesne profits is optional with the landlord; and as an action for mesne profits must notwithstanding be resorted to for the recovery of those profits, from the day of the trial, or other preceding day.

recovery of those profits, from the day of the trial, or other preceding day, to the day of obtaining possession; and as it is often difficult for the land-lord to ascertain what injury he has actually sustained by the holding over of the tenant, (the amount of the damages not being limited to the amount of the rent,) until he obtains actual possession, this provision of the statute is in provision solders recovered to

the statute is, in practice, seldom resorted to.

(w) Aslin v. Parkin, 2 Burr. 665. S. P. Gulliver v. Drinkwater, 2 T. R.
261; and see 1 Esp. 368. For, where the judgment in ejectment is against the defendant by default, costs cannot be recovered on the judgment, because the defendant is only nominal; but an action will be a series of the defendant in only nominal; but an action will be a series of the defendant in only nominal; but an action will be a series of the defendant in only nominal; but an action will be a series of the defendant in only nominal; but an action will be a series of the defendant in only nominal; but an action will be a series of the defendant in only nominal; but an action will be a series of the defendant in only nominal; but an action will be a series of the defendant of the series of the defendant of the series of the defendant of the series of cause the defendant is only nominal; but an action will lie for meane profits, and the costs of the ejectment.—See Lofft, 451; and see Doe d. Compeer v. Hicks, 7 T. R. 433. But the costs of an ejectment may be recovered in an action for meane profits, where the defendant has appeared and pleaded to the ejectment, but afterwards withdrawn the plea, and judgment was signed, although no costs have been taxed.—Symonds v. Page 1 C. & T. 90 Page, 1 C. & I. 29.

(x) Chamier v. Llingen, 2 Chit. 410. Semble, that a tenant, whose under-tenant retains the possession after the term, is not liable for mesne profits.—Burne v. Richardson, 4 Taunt. 720.

(y) Goodtitle v. Tombs, 3 Wils. 168.

(z) Pultney v. Warren, 6 Ves. jun. 80.

obtains a verdict, he cannot in the execution of a writ of inquiry to assess damages in an action for mesne profits, give in evidence the extra costs beyond his taxed costs, in order to increase the damages; but after judgment by default in ejectment, the costs of such judgment may be recovered as well as the mesne profits.(a) In trespass for mesne profits after ejectment for the recovery of a house used as an inn, the plaintiff may recover the costs of the reversal in error of a judgment in ejectment for the defendant, as between attorney and client.(b) In trespass for mesne profits after ejectment for the recovery of a house used as an inn, the plaintiff cannot recover the loss which he has sustained by the defendant shutting up the inn and destroying the custom, unless such damage be specially stated in the declaration.(c)

In trespass for mesne profits by the lessor of the plaintiff after recovery in ejectment, it is no answer to the action that a remittur damna has been entered on the record in the action of ejectment. (d)

To entitle a party to maintain trespass for the mesne profits, it is not necessary to execute an habere, if the plaintiff has been let into possession by the defendant. (e)

In the action for mesne profits, the plaintiff is entitled to receive only the taxed costs of the eject-

ment, and not the extra costs. (f)

Where there is a judgment by default in an ejectment, the plaintiff may, in the action for mesne profits, recover all the expenses he has been necessarily put to in the ejectment, and is not limited to the taxed costs, as between party and party.(g)

⁽a) Brocke v. Bridges, 7 Moor. 471.

(b) Nowell v Roake, 1 M. & R. 170. 7 B. & G. 404.

(c) Dunn v. Large, 3 Doug. 335.

(d) Harper v. Ryles, 3 Doug. 399.

(e) Calvart v. Horsefall, 4 Esp. 167.

(f) Doe v. Hare, 2 Dowl. P. C. 245. 2 C. & M. 145. 4 Tyr. 29.

Where A. took possession of premises on the 2nd of June, and a sum of money became due for ground rent on the 24th, for the quarter ending on that day, which A. paid; held, in an action for mesne profits against A., that he was entitled to deduct the money so paid from the damages.—Id.

(g) Doe d. Huddart, 2 C. M. & R. 316. 4 Dowl. P. C. 437. 1 Gale, 260. A judgment in ejectment is not conclusive evidence of title in the

When an action of trespass for mesne profits is brought against a party who has a cross claim against the plaintiff at law for money expended on land, the court will grant an injunction to restrain the proceedings at law, there being no right of set-off in such an action. (h)

action for mesne profits, unless it be pleaded by way of estoppel; therefore, under a plea (to a declaration in the ordinary form) that the premises in the declaration mentioned were not the premises of the plaintiff; it was held that the defendant might give evidence of title in himself, though he had let judgment go by default in the ejectment.—Id.

To a declaration in trespass by John Doe as plaintiff, the defendant pleaded that the premises were not the premises of the plaintiff; it was held that under this plea the defendant was at liberty to prove title in himself, the judgment in ejectment not being conclusive against the defendant, unless shown upon record.—Id.

(h) Cawdor (Earl) v. Lewis, 1 Y. & Col. 427.

EXCEPTIONS.

Exceptions in a Lease.

Timber.

to enter and

fell, &co.

Excepting and always reserving forth and out this present demise and lease, unto the said A. B., his heirs and assigns,(i) all, and all manner of timber, and trees likely to become timber, which are now, or at any time or times during the continuance of this demise or lease shall or may be standing, growing, and being in and upon the said hereby demised with liberty lands and premises, or any part thereof, WITH full and free liberty, privilege, and authority, to and for the said A.B., and his heirs and assigns, (j) and any of his or their servants, agents, chapmen, labourers, and workmen, at their or any of their free wills and pleasures, at any time during the continuance of this demise, to come into and upon the said hereby demised premises, to fell, stock, and cut down the same in and upon the said premises, and to cleave, cord, hew, square, saw, lay and place the same timber and other trees, and to make coal pits and saw pits for the sawing thereof, and coal fires and heaths: and to dig, get, and take turfs, earth, and clods; and to do every other act and thing which shall be necessary and requisite for the charcoaling, converting, and working up thereof: and with horses, oxen, wains, carts, and other carriages, to take and carry away the same, making reasonable satisfaction to said C.D., his executors or administrators, for the damage he or they shall or may sustain thereby, in corn, grain, or mowing grass. And also excepting and always reserving forth-

To plant.

⁽i) If the lease is from a tenant for life, under a power in a settlement, "Unto the said A. B. and his assigns, and the person or persons who for the time being shall be entitled in remainder to the freehold and inheritance of the said premises, under the hereinbefore mentioned indenture of

⁽j) See note (i).

with, and out of the present demise and lease, (k) unto the said A. B., his heirs and assigns, and his, their, or any of their servants, agents, or workmen, during the continuance of this demise or lease, at all seasonable times in the year for planting of trees, full and free liberty to come and be in and upon the said demised lands and premises, and in the hedge rows and fences thereof to set and plant such and so many young trees as he, they, or any of them, shall from time to time think proper, and to do every needful and necessary act to fence in and preserve the same.

And also excepting and always reserving forth- Game. with, and out of this present demise and lease unto the said A. B., his heirs and assigns, (1) all hares, partridges, pheasants, birds and beasts, of warren or chace, which at any time during the continuance of this demise, are, or shall come, be bred or found, in or upon the said demised premises; and all fish pits, ponds, or fishing places there, together with full and free liberty, power, and authority, to and for the said A. B., his heirs and assigns, and his or their servants, agents, friends, and followers, to enter and come into and upon the said demised premises, at any time during the continuance of this demise, with horses, and such dogs, guns, nets, and other engines as he or they shall see proper, to hunt, hawk, fish, fowl, take and carry away the same, at his and their free wills and pleasures, doing no wilful damage thereby in mowing grass or standing corn; and for the purpose of taking the fish to draw down and let dry any pits, ponds, or fishing places; and to make any ditches or drains, and to do all other acts and things, which shall be necessary for the drawing or fishing thereof; he, the said A. B., his heirs and assigns, from time to time afterwards repairing and making good the dams of such pits or ponds as shall be so drained or let dry as aforesaid.

⁽k) If from a tenant for life under a power, "Unto the said A. B. and his assigns, and the lessor of the said premises for the time being."
(l) See note (k).

Mines.

And also excepting and always reserving forth and out of this present demise and lease, unto the said A. B., (m) his heirs and assigns, all mines and minerals that are, or shall, or may be found in or upon the said demised premises; with leave to search for, dig, get, have, take, and carry away the same.

Planting for

And also excepting and always reserving forth twenty acres and out of this present demise and lease,(n) unto said A. B., his heirs and assigns, and his and their servants, agents, and workmen, at any time or times during the continuance of this demise or lease, upon him or them first giving twelve months' previous notice in writing of such his or their intention, unto the said A. B., his executors or administrators, or by leaving the same at his or their last or most usual place or places of abode, to enter upon and take into his or their possession; and as he the said A.B., his heirs and assigns, (o) shall think fit and proper, all or any part or parts of the said demised lands and premises, not exceeding in the whole twenty acres, for the purpose of planting young trees therein and thereon, and to fence in and enclose the same; and to use and enjoy the said excepted premises, in all respects as if this demise had not been made; he the said A. B., (p) his heirs and assigns, from the time or times of every such entry, yearly and every year during the then remainder of this demise or lease, making an allowance or abatement unto the said lessee, his executors or administrators, out of the yearly rents hereby reserved, of the sum of ----, for each and every acre of the said demised premises; and so in proportion and after that rate for any greater or less quantity than an acre, as shall be so entered upon and taken for the purpose of planting as aforesaid.

⁽m) See note (k). (n) See note (i) to p. 440.

o) Id. (p) Id.

(2.) Another Form of Exceptions in a farming

Except, and always reserved unto the said A. B., Woods, his heirs and assigns, all and all manner of woods, groves, &c. groves, coppices, and springs, and all trees of oak, ash, elm, and all other timber and timber-like trees whatsoever, and the branches, and sheds, and lops, of the same, and all fruit trees whatsoever, but not the fruit thereof; and all pollards and willows, and all other trees whatsoever; and all the underwood, thorns, bushes, and quicksets, in, upon, or about, the said premises, except the lops and tops of pollards, stubbs, and surplus thorns, required for firing, which may be taken by the said C. D., his executors, administrators, and assigns; and all the reeds in the marshes now standing, growing, and being, or which at any time or times hereafter, during the continuance of this demise, shall stand, grow, or be upon the said premises, or any part thereof.

And also, all mines and quarries in, under, and Mines, with upon, the same premises, and all such marl, clay, power to chalk, brick, earth, gravel, sand stones, and other materials, which now are, or hereafter, during the continuance of this demise, shall be, under or upon the same premises, or any part or parts thereof, as the said A. B., his heirs or assigns, may choose to have and carry away; with free liberty of ingress, egress, and regress, to and for the said A. B., his heirs and assigns, and his and their agents, servants, and workmen, at seasonable times in the year, during the continuance of this demise, with or without horses, carts, carriages, and all other necessary things, into, upon, from, and out of, all or any part or parts of the premises hereinbefore demised, and to view, fell, cut down, hew, grub up, cut, saw, convert, dig for, and carry away, the said excepted woods, trees, minerals, and other things respectively, or any part or parts thereof respectively.

And also, to graft, and plant, and transplant, Plant.

trees, and sow seed trees in or near the hedge-rows, borders, and waste places, and in the woods, groves, coppices, and springs, of or belonging to the said premises, and to fence about and preserve the same from injury, by cattle or otherwise, at his and their free will and pleasure, thereby doing as little damage as possible to the said C. D., his executors, administrators, or assigns.

And also, except and always reserved unto the

Game.

Liberty of ingress.

Bruld

said A. B., his heirs and assigns, all manner of game, fish, and wild fowl, with free liberty for him and them, and his and their servants and friends, at all seasonable times, to hunt, hawk, fish, fowl, set, course, shoot, and sport, upon or over the said premises hereby demised, or any part or parts thereof; and full and free liberty of ingress, egress, or regress, to and for him and them, and his and their agents, servants, and workmen, at all seasonable times in the year, into, upon, from, and out of, any part or parts of the said premises, to view the state and condition of the buildings thereon, and to pull down, re-build, alter, and repair, the houses and buildings thereon, or any of them, at their or his pleasure, and also to view the state and condition of the repairs hereinafter covenanted to be done by the said C. D., his executors, administrators, and assigns, and to give notice in writing to the said C. D., his executors, administrators, and assigns, for doing such repairs as shall from time to time be necessary, and proper to be done; and also, to bring, carry, fetch, lay, and make, all the materials and things necessary and proper to be used in or about the pulling down, re-building, altering, or repairing, the said house, building, and premises, or any part or parts thereof, thereby doing as little damage as possible to the said C. D., his executors, administrators, and assigns.

Landlord to sow on the last year of

And also, except and reserved unto the said A.B., his heirs and assigns, free liberty forhim and the demise. them, and his and their succeeding tenant or tenants of the said premises hereby demised, and their, or any of their, servants and workmen, with horses and all other necessary implements of husbandry, in due season in the last year of this demise, to enter into and upon so much of the arable land hereby demised as shall be then sown with summer corn, there to sow clover or grass seeds with such summer corn, and to harrow and roll in the same.

And also, except and reserved unto the said For serv-A. B., his heirs and assigns, convenient lodging ants. room for his and their servants and workmen, and convenient stable room for his or their horses, and for hay, straw, and provender, for such horses, during the time of such horses and workmen being employed in sowing the said clover and other grass seeds, and in harrowing and rolling in the same; and also, for liberty of ingress and regress for him and them, and his and their servants and workmen, with horses and carriages or otherwise, to come, go, pass, and repass, into, over, upon, and from, the said premises, or any of them, or any part or parts thereof, at all seasonable times, for any reasonable cause or thing whatsoever.

(3.)

Exception, if Timber in a Lease.

Except, and always reserved out of this present Timber. demise, unto the said A. B., his heirs and assigns, all timber and other trees, mines, minerals, and quarries, now growing or being, or which at any time, during the continuance of this demise, shall grow or be, upon the said demised premises, or any part thereof, with free liberty and power for the said With liberty A. B., his heirs and assigns, and his and their for lessor to fell, agents, servants, workmen, and others, at all con- &c. venient times and seasons, to enter into and upon the said demised premises, to fell, cut down, and convert, the said timber and other trees, and to search for, dig, raise, and make merchantable, the said mines, minerals, and quarries, and the said excepted premises, and every part thereof, to take and

carry away at his and their will and pleasure, making such reasonable recompense from time to time, for the damages which the said C. D., his executors, administrators, or assigns, or any of them, shall sustain by the exercise of the reservation aforesaid, or either of them, as two indifferent persons, one to be chosen by each party, shall think reasonable; and also, except and reserved unto the said A. B., his heirs and assigns, the sole liberty, power, and privilege, of hunting, coursing, shooting, and sporting, by him and themselves, and his and their companions, game-keepers, servants, and others, at all other seasonable times, in, over, and upon, the said demised premises, and every part thereof.

(4.)

Exception of Timber, also of a Carriage and drift Way.

Timber, and carriage and drift way.

Excepting, and always reserving out of this present demise and grant, unto the said A. B., his heirs and assigns, all timber trees, and other trees likely to become timber, now standing, growing, and being, or which shall or may at any time hereafter stand, grow, or be in or upon the said granted premises, every or any part thereof, with free liberty to enterupon, and cut down, and carry away, the same, at all seasonable times; and also a carriage and drift way through and over the aforesaid premises for the said A. B., to and from any of the farm or ground for any purpose.

(5.)

Another of Exception of Timber.

Timber.

Excepting, and always reserving out of this present demise and grant unto the said A. B., his executors, administrators, and assigns, all timber trees, and trees likely to be timber, now standing, growing, or being, or which at any time during the

term hereby granted shall stand, grow, or be, in or upon the said demised premises; together with free liberty of ingress and regress, to and for the said A. B., his heirs and assigns, to fell, cut down, and carry away the same, at fit and reasonable times in the year.

(6.)

Another Form of Exception of Woods, Trees, and Coppies.

Excepting, and always reserved out of this demise, woods, &c. all woods, underwoods, and trees, groves and coppices, of and in the before-demised premises, or thereunto belonging or appertaining, or which are now growing, or hereafter shall be growing, and being in and upon the same premises, and the soil and ground thereof, together with free ingress, egress, and regress way and passage to and for the said A. B., his heirs and assigns, with horses, carts, wains, and ploughs, and other draughts and carriages, to, from, in, and out of the same; and for cutting, felling, selling, and carrying away the same at reasonable times.

(7.)

Exception of Mines.

Except, &c., all mines and quarries of coals, stone, and slate, and all other mines whatsoever, in or upon the said premises, or any part thereof, with free liberty to dig up, work, and carry away the same, at all seasonable times; he, the said A. B., his heirs or assigns, paying unto the said C. D., his executors, administrators, and assigns, all such reasonable damages as shall be adjudged to have been done by two indifferent persons; one to be chosen by said A. B., his heirs and assigns, and the other by the said C. D., his executors, administrators, or assigns. And also free liberty of fishing, fowling, hawking, hunting in and upon the said premises, and every or any part thereof.

(8.)

Exceptions in a mining Lease.

Mining lease.

Save and except, and always reserved out of these presents, and the lease or demise hereby made or intended to be made unto the said A. B., his heirs and assigns, all such other seams, strata, veins, and mines, of iron stone, and all other mines, minerals, fire clay, stone, and earth, of what nature or kind soever, not being part and parcel of the said mines of coal and brick clay intended to be hereby And also full and free liberty to and for demised. the said A. B., his heirs and assigns, to the said excepted mines, and his and their agents, workmen, and labourers, with free ingress, egress, and right to the said excepted mines and premises; and to work, dig, break up, get, carry away, convert, sell, and dispose of, all the said excepted mines, minerals, iron stone, fire clay, earth, and other things hereby excepted, at his and their, or any of their free will and pleasure, and for that purpose to make, use, and deepen, all or any of the pits or shafts which may have been made or sunk by the said C. D., his executors, administrators, or assigns, on any of the said lands and premises, when he the said C.D., his executors, administrators, or assigns, shall have worked out such pits, and done using such shafts. And also full power, liberty, and authority, for him and them, from time to time, and at all times during the continuance of this demise, to sink and make other shafts or pits in and upon the said lands; and to erect, build, and construct all such erections, buildings, furnaces, kilns, works-houses, machines, and conveniences, as he or they may think necessary for any of the purposes aforesaid; but nevertheless so that the said A. B., his heirs and assigns, shall not by such last mentioned works, interfere with, hinder, or obstruct the said C.D., his executors, administrators, and assigns, in the enjoyment of the premises hereby demised. And also making an allowance for the brick curbs, timber, and manure,

left therein, as also for the coal that shall be left by the said C. D., his executors, &c., for the support and preservation of the shaft, for the use of the said A. B. as aforesaid, a fair and reasonable compensation and satisfaction, to be ascertained, settled, and allowed by reference, in case the said parties cannot themselves agree upon the amount of the same, in manner hereinafter expressed.

(9.)

Exception of a Parcel of Land and Timber.

Except one acre of land, parcel of the said, &c., Land and also all timber trees, and all young trees fit and proper to be raised and preserved for timber trees, together with their tops and shrouds, now standing, growing, or being, or which shall hereafter stand, grow, or be, in or upon the said premises, or any part thereof, with free liberty to fell, cut down, take and carry away the same, at all seasonable and convenient times, unto the said A. B., his heirs and assigns.

(10.)

Exception of a Right of Way.(q)

Except, and always reserved out of these presents, Right of and the demise hereby made, so much and such way. part of the said close and field, called, &c., as is now used as a road, from, &c., to, &c., and the soil and ground of the said road, with full and free liberty, from time to time, and at all times, to do every necessary act for repairing and preserving the said road in good order and repair.

(q) A right of way may be reserved to the lessor by the tenant's covenant in the latter part of the lease, which seems to be the better way; but if the lessor wishes to reserve to himself the soil and property of the way, that he may repair it himself, the land, and not the right of way only should be excepted out of the demise, as in the above form.

(11.) Another Form.(r)

Way.

Except, and always reserved out of these presents, all that piece of ground situate at or near the middle of the field called, &c., which is now marked out and distinguished from the residue by stakes, which said excepted ground extends the whole length of the said field, from east to west, and contains in breadth twenty feet at the east end thereof for the length of two hundred feet, and twenty-five feet in breadth for the residue thereof.(8)

(12.) Another Form.(t)

Except, and always reserved out of this demise, fifteen feet of the middle part, or as near the middle part as may be, of the said close called, &c., for the whole length thereof, from east to west, for the purpose of forming a carriage road to lead from the mansion house of the lessor, with such right of passage to and for the said, &c., as well on foot and on horseback, as with carts, carriages, and horses, in, to, through, over, and along, every part of the same field as shall be necessary or convenient for making and perfecting the said road.

(r) If the road has not been already formed, then, except the part through which the road is intended to lead, similar to the above form.

to ascertain the excepted quantity.

(t) This form may be adopted where no boundary stakes or stones are

⁽s) The description of the extent must be adapted in every instance to the circumstances of the case. Holes should be made where the stakes are placed, when the ground for the road is set out, and workmen should be directed to pay particular attention to these boundaries, in order, if they should be effaced or destroyed by the tenant, that there may be evidence to accertain the excepted quantity

OBSERVATIONS AND CASES.

An exception is a clause in a deed whereby the what an exlessor excepts something out of that which he has ception is. granted before by the deed; and, being the act and words of the lessor, shall be taken strictly against him.(u)

In every good exception these things must always What must

concur in making an

First, the exception must be by apt words; as, exception. "saving and excepting," &c.

Secondly, it must be of part of the thing demised,

and not of some other thing.

Thirdly, it must be part of the thing only, and not all,—the greater part, or the substance of the thing granted; thus, an exception in a lease which extends to the whole thing demised is void.

Fourthly, it must be such a thing as is severable from the premises demised, and not of an insepa-

rable incident.

Fifthly, it must be of such a thing as he who doth except may have, and which properly belongs to him; thus, it must be of a particular thing out of a general, and not of a particular thing out of a particular thing.

Sixthly, it must certainly be described and set down; therefore, if one demise a manor, excepting one acre, without setting forth which or what

acre it shall be, the exception is void.(v)

If a man be possessed of a new house and an old Cases dehouse, and make a lease, with an exception of the cided. new house, for the use of the lessor, when he pleases to reside there, and at other times for the use of the lessee, the new house is well excepted, and such exception is not avoided by the words, "At all times to be used by the lessee when the

⁽u) Shep. Touch. 77. (v) Dorrell v. Collins, Cro. Eliz. C.

Cases

lessor doth not dwell there;" for that sentence doth not enure as an exception out of an exception, (which sets the matter at large,) but only as a declaration of the lessor's intention in making the exception.(w) So, if a man lease his house, excepting his new house during the term, this exception is good; but if he except it during life, it is void; or, if a man having a term of two houses for certain years, grant his houses, excepting one of them, for life, this exception is void; for the words "during life," qualify the exception, and show his intent that the one house shall not be excepted during the whole term, and so it is void.

Where a lessee for life made a lease for years, excepting the wood, underwood, and trees, growing upon the land, it was held a good exception, although he had no interest in them but as lessee, because he remained always tenant, and was chargeable in waste; wherefore, to prevent it, he might make the exception; but if a lessee for years assign over his term with such an exception, it is a void

exception.(x)

An exception of all trees, woods, coppice wood, grounds, of what kind or growth soever, in a lease,

does not extend to apple trees. (y)

An exception in a lease of lands in Dorsetshire. of all timber trees and other trees, but not the annual fruit thereof, does not include apple trees.(z)

Any one may now lease or convey his land, and reserve to himself the right of entering to kill game,

without being sued as a trespasser.(a)

Ples of tres-

A plea to trespass quare clausum fregit, stating

⁽w) The latter words, however, make the lessee tenant at will.—Cudlip v. Randall, 3 Salk. 156. S. C. 4 Mod. 11. 12 Mod. 15; and see Hob. 170. Dyer, 261, b.

⁽x) Bacon v. Gyrling, Cro. Jac. 296.
(y) Wyndham v. Way, 4 Taunt. 316.
(z) Bullen v. Denning, 8 Dowl. & Ryl. 657. S. C. 5 Barn. & Cress. 849.
(a) But an exception in a deed made 1653, of the free liberty of hunting and hawking, will not extend to shooting feathered game with a gun, because guns not being in common use could not be in the contemplation of the parties.—Moore v. Plymouth (Lord), 1 Meore, 346. S. C. 7 Taunt. 614.

that the plaintiff was tenant to the defendant of the pass quare close, subject to the reservation to him of all pits fregit. in the close, with ingress, &c., to cut and carry away peat and turf, is bad on demurrer; first, for not showing how and when defendant's interest in the close commenced; and secondly for alleging a reservation of what is properly the subject of exception.(b)

Notwithstanding an exception in a lease of certain closes or rooms which the lessee is not to use, he may pass and re-pass through them if they are so situated that he cannot otherwise have the complete enjoyment of the lands or premises demised

to him.(c)

⁽b) Fancy v. Scott, 2 Man. & Ryl. 335. (c) 11 Co. Rep. 52, a.

GRANTS.

(1.)

Grant of a Road or Way.(d)

Parties.

Considera-

Way.

This indenture made the —— day of, &c., BE-TWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part; WITNESSETH, that in consideration of the sum of, &c., by the said C. D., to the said A. B., in hand, paid at, &c., and also in consideration of the sum of, &c., a year, to be paid to the said A. B., his heirs and assigns, he, the said A. B., DOTH grant and confirm unto the said A. B., his heirs and assigns, [if for a term of years say, "executors, administrators, and assigns,"] FREE and convenient may, (e) as well a horseway as a footway, as also for carts, waggons, and all other carriages whatsoever, in, through, over, and along, all that piece or parcel of land or ground leading from, &c., called, &c., and lying between, &c., of the breadth, &c., as the same is more particularly delineated in a plan thereof, drawn in the margin of these presents, with full and free liberty to make and lay causeways, or otherwise to repair and amend the same, when and as often as there shall be occasion, together with full and free license for the said

What is a right of way.

(d) A right of way, or a right of passage for water, (where it does not create an interest in the land,) is an incorporeal right, and stands upon the same footing with other incorporeal rights, such as rights of common, rents, advowsons, &c. It lies not in livery, but in grant, and a freehold interest in it cannot be created or passed otherwise than by deed.—5 B. & Creas. 229.

Grant of way.

(e) Under the grant of a free and convenient way for the purpose of carrying coals, (among other articles,) the grantee has a right to lay a framed waggon way.—Senhouse v. Christian, 1 T. R. 560. But under a grant of a way from A. to B., in, through, and along, a particular way, the grantee is not justified in making a transverse road across the same.—Id. Where A. granted land to B. of unequal width, described as abutting on a road on his own soil, it abutted on the broadest part of the road; but in the narrowest part of it a narrow strip of the grantor's land intervened between the road and the premises granted; it was held that the grantor, and those claiming under him, were concluded from preventing the grantee from coming out into the road over this slip of land.—Roberts v. Karr, 1 Taunt. 495.

C. D., his heirs and assigns, (or "executors, administrators, and assigns,") from time to time, and at all times hereafter, [or during the continuance of the said term,] by all or any of the carriages aforesaid, to lead and carry stone, wood, timber, iron, brick, tiles, gravel, or any other thing or things whatsoever, in, through, over, and along, the said piece or parcel of ground, leading as aforesaid, yielding and paying, therefore, every year henceforth and for ever, for during the continuance of the said term,] the yearly fee farm rent of, &c., on the — day of, &c., in every year (if demanded); and the said C. D., for himself, his heirs, executors, Covenant to administrators, and assigns, doth hereby covenant, repair. promise, and agree, to and with the said A. B., his heirs and assigns, that he, the said C. D., his heirs, executors, administrators, or assigns, shall and will, at his and their own proper costs and charges, repair, amend, and keep in repair, the said road and way, in a substantial manner. (f) In witness, &c.

(2.)

Grant of a Right of Way in Consideration of the Extinguishment of another Road or Way.

This indenture made the —— day of, &c., BE- Parties. TWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part; WHEREAS, the said A. B. is Recitals of seized in fee simple of certain closes of land which the seizin of the respectare now, or late were, in the occupation of, &c.; ive parties. AND WHEREAS, the said C. D. is also seized in fee simple of certain pieces or parcels of ground lying, &c.; AND WHEREAS, the said A. B., and all the Right of owners and occupiers of the said closes, have been road. accustomed from time immemorial to pass and repass from the closes of the said A. B., to and over the pieces and parcels of ground belonging to the said C. D., either on foot or on horseback, with

⁽f) The grantee of a way having the use of it is bound to repair it.—Pomíret v. Ricroft, 1 Saund. 321. Taylor v. Whitehead, Dougl. 721. But notwithstanding this, it is usual to insert a covenant to repair.

The benefit to accrue.

servants, workmen, horses, carts, and other carriages, at all times of the year; AND WHEREAS, it would be much to the benefit and advantage, as well of the said A. B. as of the said C. D., that the right of passage along the north side of the said pieces, &c., of ground should be extinguished, and a right of passage given and granted in lieu thereof, along the west side of the same piece, &c. THIS INDENTURE WITNESSETH, that in consideration of the liberty of passage hereinafter given and granted unto the said A. B., his heirs and assigns, and also in consideration of the sum of £ the said A. B., in hand, &c., paid by the said C. D.,

he, the said A. B., doth remise, release, and quit

claim, unto the said C. D., his heirs and assigns, all

part.

Witnessing

Consideration.

Operative part of extinguishment.

Grant of way by C. D.

keep in repair.

right, title, and claim, which the said A. B. now hath, to the liberty of passing to and over the said way or road, on the north side of, &c., either on foot, &c., to the intent that the same may be extinguished; AND THIS INDENTURE FURTHER WIT-NESSETH, that in consideration of the premises he. the said C. D., doth give and grant unto the said A. B., his heirs and assigns, full and free liberty and privilege of passing and re-passing on foot, &c., or on horseback, with servants, workmen, horses, carts, and other carriages, at all times of the year, as he or they shall think fit, from the said closes of the said A. B. to and over the road lately made by the said C. D., along the west side of said piece, &c., of the said C. D., containing by admeasure-Habendum. ment, &c.; TO HAVE, hold, use, and enjoy, the said liberty and privilege of passing and re-passing, on foot or on horseback, with servants, workmen, horses, carts, and other carriages, to and over the said new road now made, &c., on the said west side Covenant to of the same piece, unto, &c.; AND the said A. B., for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said C. D., his, &c., that he, the said A. B., his heirs and assigns, shall and will, at his and their own costs and charges, from time to time, and at

all times for ever hereafter, maintain and keep the said road in good and sufficient repair, without requiring any satisfaction for the same from the said C. D., his heirs and assigns, or any other person or persons claiming or to claim from, by, or under, him, them, or any of them: PROVIDED ALWAYS, and it Provise in is hereby declared and agreed, by and between the terruption. parties hereto, to be the true intent and meaning of them and these presents, that in case the said A.B., his heirs or assigns, or his or their servants, workmen, or any of them, shall at any time hereafter be obstructed or hindered in passing or re-passing on foot, &c., to and over the said road now made, &c., by him, the said C. D., his heirs or assigns, or any of them, then these presents, and every clause herein contained, shall absolutely cease and determine any thing herein contained to the contrary, in anywise notwithstanding. In witness, &c.(g)

(3.)

Grant on the Sale of a fee farm Rent.

This indenture made the ---- day of, &c., be- Parties. tween C. D., of, &c., of the one part, and E. F., of, &c., of the other part; WHEREAS, by an indenture Recital. dated the —— day of, &c., and made between A.B., of, &c., of the one part, and the said C. D., of the other part. For the consideration therein mentioned the said A. B. did give, grant, and confirm unto the said C. D., his heirs and assigns, a clear yearly rent charge, or annual sum of £——, without any deduction or abatement whatsoever, to be issuing or payable out of, or charged upon, all that, &c., (describe the premises). And whereas the Contract. said E. F. hath contracted with the said C. D., for the absolute purchase of the said clear yearly rent charge, or sum, at or for the price or sum of £50. Now this indenture witnesseth, that in pursu- Consideraance of the said agreement, and in consideration of tion. the sum of £50 of lawful money of Great Britain, by

(g) As to grants of ways, see p. 461.

Operative part.

the said C. D. to the said E. F., in hand, paid, &c., the receipt, &c., he the said C. D. doth give, grant, and confirm unto the said E. F., his heirs and assigns, ALL that clear yearly rent charge, or annual sum of, &c., so granted or assured by the said hereinbefore in part recited indenture, with all and every benefit and advantage of distress and entry, and all powers and remedies reserved to and vested in him the said C. D.; and all the estate, right, title, and interest of him the said C. D., of, in, to, and out of, the said yearly rent charge or annual sum of, Habendum. &C. To have and to hold the said yearly rent charge, or annual sum of £---; and all and singular other the premises hereby granted, or otherwise assured or intended so to be unto the said E. F., his heirs and assigns. And the said C. D. doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said E. F., his heirs and assigns, that notwithstanding any act, deed, matter or thing, by him the said C. D., made, done, or permitted to the contrary, he the said C. D. now hath in himself

Covenants.

Right to grant.

Free from incumbrances.

ther assurance.

unto the said E. F., his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents. And that the same yearly rent charge or annual sum is at the time of the sealing and delivery of these presents free and clear, or otherwise, by him the said C. D., well and sufficiently indemnified of, from, and against all liens, charges, and incumbrances whatsoever, made, done, or permitted by the said C. D., or any person And for fur- claiming through, or in trust for him. And moreover that he the said C. D., and his heirs, and all persons whoseever claiming through or in trust for him, shall and will, at the request and charges of

good right to grant and convey the said yearly rent

charge or annual sum, hereby given and granted

the said E. F., his heirs and assigns, make and perfect all further assurances that may be necessary for the more effectually or satisfactorily conveying the said vearly rent charge, or annual sum hereby given and granted; unto the said E. F., his heirs and assigns, according to the true intent and meaning of these presents; as by the said E. F., his heirs or assigns, or his or their council in the law, shall be devised and tendered to be executed. In witness, &c.(h)

(4.)

Grant of a Pew in a Church.

This indenture, made the —— day of, &c., BE- Parties. TWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part, WITNESSETH, that for and in Consideraconsideration of the sum of, &c., to the said A. B., in tion. hand, paid by the said C. D., at or before the sealing and delivery of these presents, the receipt, &c., he the said A. B. doth grant, bargain, and sell unto Operative the said C. D., his heirs and assigns, ALL that pew Seat. or seat, formerly of R. B., late of, &c., deceased, the grandfather of the said A. B., and now of the said A. B., situate and being in the body of the parish church of Saint John, in the county of, —— (being No. 23,) abutting, &c., with the appurtenances; and also all the estate, right, title, interest, and property whatsoever, either at law or in equity, of him the said A. B., of, in, and to the same premises; To Habendum. HAVE AND TO HOLD the said pew or seat hereby granted unto the said C. D., his heirs and assigns, to the use and behoof of the said C. D., his heirs and assigns for ever; to be used and enjoyed with the mansion house of the said C. D., situate in, &c., aforesaid, within the said parish of, &c., for ever, or otherwise at the pleasure of the said C. D., his heirs or assigns; And the said A. B., for himself, Covenant for peacehis heirs, executors, and administrators, doth cove-able possesnant, with the said C. D., his heirs and assigns, in sion. manner following; that is to say, that it shall and may be lawful to and for the said C. D., his heirs and assigns, tenants or under-tenants of the mansion house aforesaid, from time to time, and at all

(h) As to fee farm rents, see p. 465.

Free from incumbrances.

And further assurance. times hereafter, peaceably and quietly to have, use, occupy, and enjoy the said hereby granted pew or seat, and every part thereof, without any the lawful let, suit, trouble, molestation, or interruption, of or by the said A. B., or his heirs, or any other person or persons whomsoever, lawfully claiming or to claim, by, from, or under him, them, or any of them, or by, from, or under, the said R. B., deceased; and that free and clear, and freely and clearly acquitted and discharged of and from any former grants, bargains, sales, leases, settlements, wills, and all other titles, charges, and incumbrances, whatsoever, made or done by the said A. B., and R. B., deccased, or either of them, or any other person or persons whomsoever, lawfully claiming or to claim, by, from, or under them. And further, that the said A. B. and his heirs, and all other person and persons, having, or lawfully claiming, or to claim, any estate right, title, or interest, in, or to, the said hereby granted pew or seat, by, from, or under the said A. B., or the said R. B., or either of them, shall and will, at any time hereafter, upon the reasonable request and charge of the said C. D., his heirs or assigns, make, do, and execute, or cause and procure so to be, all and every such further and lawful act, deed, matter, or thing, in the law, whatsoever, for the better conveying, assuring, and confirming the said pew or seat unto, and to the use of the said C. D., his heirs and assigns, according to the true intent and meaning of these presents. In witness, &c.(i)

(i) As to grants of pews, see pp. 465, 466.

OBSERVATIONS AND CASES.

THERE are four kinds of ways: (j) first, a foot- As to ways way; second, a horse-way, which includes a footway; third, a carriage-way, which includes both horse-way and foot-way; fourth, a drift-way. (k)

A private way is a right which one or more per- Private sons have of going over the land of another. This ways how may be claimed either by grant, prescription, custom, (l) by express reservation, (m) as necessarily incident to a grant of land, (n) or by virtue of an inclosure act.

A way is said to be claimed by grant; as, where By grant A. grants that B. shall have a way through a particular close, (o) so a covenant that another shall have and use a way, amounts to a grant. (p) And if a man seized of whiteacre and blackacre uses a way through the latter to the former, and afterwards grants whiteacre, with all ways, &c., such right of way passes to the grantee. (q) Where a lease of premises described them as abutting on an intended way, without specifying the breadth, it was held that the sub-lessee was entitled to a convenient way only. (r) In an action on the case for the dis-Disturbance turbance of a right of way, leading from a public of a right of way. street through the defendant's premises to a yard at the back of the plaintiff's house, originally forming

⁽j) Co. Litt. 56, a.
(k) Although a carriage-way comprehends a horse-way, yet it does not Carriage necessarily include a drift-way.—1 Taunt. 279. It is said, however, that way. evidence of a carriage-way is strong presumptive evidence of the grant of a drift-way.

⁽¹⁾ By custom; as, where every inhabitant of such a villa shall have a Custom. way over such land, either to church or market, is good, because it is only an easement, but not a profit.—See Co. Litt. 110, b. Cro. Eliz. 180; and

⁽m) By express reservation; as, where A. grants land to another, re-Reservation serving to himself a way over such land.—See Earl of Cardigan v. Armitage, 2 B. & C. 197. 3 Dowl. & Ryl. 414.

(n) See p. 449.

(o) Com. Dig. Chimin. (D. 3.)

(p) Holmes v. Seller, 3 Lev. 305.

(q) Staple v. Haydon, 6 Mod. 3.

(r) Harding v. Wilson, 2 B. & C. 96.

part of the demise by lease to the defendant; it was held that a grant of "all ways used or enjoyed before, with" the plaintiff's premises, was good, though there was no express grant of the way in question.(s)

Conveyance with all ways.

If a close is conveyed, with all ways thereto belonging and appertaining, the easement will not pass except in the case of a way of necessity, where such right of way would pass, without any words of grant of ways. (t) But a way not strictly appurtenant will not pass by those words in a conveyance, unless the parties appear to have intended to use them in a sense larger than their ordinary legal sense. (v)

All ways in lease.

Where the plaintiff claimed a right of way over the defendant's soil, and it appeared that in the defendant's lease, granting him all ways without exception or qualification, there was a covenant for contributing, with other occupiers of the lessor's property, to the keeping up paths, &c., used in common by them; and it was proved that the plaintiff had always used the path in question, and that there was no other path to which the covenant could apply; it was held that it might be inferred that the defendant took the soil demised to him subject to the plaintiff's right of way. (v)

Ways used, &c.

A grant of the closes of W. and S., "with all ways used, occupied, or enjoyed therewith," extends to ways used, &c., over the other lands of the grantor; but does not convey to the grantee a right to ways used to and from one of those parcels over

(s) Kooystra v. Lucas, 1 D. & R. 506. 5 B. & A. 830. (t) Grymes v. Peacock, Bulst. 17.

Usual words

(a) Barlow v. Rhodes, 1 Crompt. & Mees. 439. The words "belonging and appertaining" are synonymous.—Id. 448. Where an underlease described the road demised, and the way granted by the words "all ways thereunto appertaining," it seems that a right of way over the original lessor's soil would not pass by these words.—Harding v. Wilson, 2 B. & C. 100. 3 D. & R. 287. One being seized in fee of the adjoining closes A. & B., over the former of which a way had immemorially been used to the latter devised to B., with the "appurtenances," it was held that the word "appurtenances" claimed a right of way over A. to B., as no new right of way was thereby created, and the old one was extinguished by the unity of seisin in the devisor.—Whalley v. Thompson, 1 B. & P. 371.

(v) Oakley v. Adamson, 8 Bing. 366. S. C. 1 Moore & Scott, 510.

the other of them. (w) No way or other easement can subsist in land of which there is an unity of possession.(x)

Grants of rights of way may be presumed from Presumplong enjoyment, when its commencement cannot of ways. be accounted for, unless a grant has been made. (y)

By 2 and 3 W. IV., c. 71, s. 2, in claims of right of By prescripway by prescription, when the way shall have been tion (ways). actually enjoyed for full twenty years without interruption, it shall be defeated or destroyed only by showing that such right was first enjoyed at any time prior to such period of twenty years; and when it has been enjoyed for full forty years, the right shall be absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement, expressly given or made for that purpose by deed or writing.

Where a particular tenant relies on a presumptive Presumpright, he must before this act have set forth the tive right. seizin in fee of the owner, and then have traced

his own title from the owner of the fee. (z)

A person who prescribes in a que estate for a private way, cannot justify going out of it on the adjoining land because the way is impassable. (a)

(w) Plant v. James, 2 Nev. & M. 517.

(x) Morris v. Edginton, 3 Taunt. 24. But if a lessor having used convenient ways over his own adjoining land, during his own occupation, demises premises, with all ways appurtenant, unless it he shown in evidence that there was some way appurtenant in alieno solo, to satisfy the words of the grant, it shall be intended that he meant the ways used, and

they shall pass, though he miscall them appurtenant.—Id.

(y) 5 B. & Ald. 237. The uninterrupted enjoyment of a right of way Presumpfor twenty years, and no evidence that it had been used by leave or favour, tion. or under a mistake, was held sufficient to leave to a jury to presume a grant, although the road in question had been extinguished about twentysix years before, under the award of the commissioners of an inclosure act.—Campbell v. Wilson, 3 East, 294. So where there had been an absolute extinguishment of a right of way for many years by unity of possession, but the way had been used for thirty years preceding an action for its obstruction, the jury were directed to presume a grant from the defendant.—Keymer v. Summers, Bull, N. P. 74. See 3 T. R. 157. Though an uninterrupted possession for twenty years and upwards be a bar to an action on the case, yet the rule must be taken with this qualification, that the possession was with the acquiescence of the person seized of an estate of inheritance. The mere knowledge of the tenant is not sufficient, other-

wise he might collude to the prejudice of his landlord.

(z) 2 Salk. 562. Com. Dig. Chimin. (D. 2.)

(s) Bullard v. Harrison, 4 M. & S. 387. It is not a good justification in trespass that the defendant has a right of way over part of the plaintiff's Justification

Limited right of way

A right of way for agricultural purposes, is a limited and qualified right of way, and does not necessarily confer a right to use such way for general and universal purposes. (b)

Evidence of a prescriptive right of way for all manner of carriages, does not necessarily prove a

right of way for all manner of cattle. (c)

Ways of necessity.

A way of necessity (d) is limited by the necessity which created it, and when such necessity ceases, the right of way also ceases; therefore, if at any subsequent period the party formerly entitled to such way, can approach the place to which it led by passing over his own land, by as direct a course as he would have done by using the old way, such way ceases to exist as of necessity.(e)

A purchaser of part of the lands of another, has a way of necessity over the vendor's other lands, if there be no convenient way adjoining; so if a man having four closes lying together, sells three and reserves the middle close, to which he has no way but through one of those sold, although he did not reserve any way, yet he shall have it as reserved to

him by the law. (f)

A way of necessity passes by a grant or lease of the land without being expressed, for the land cannot be used without a way.(g)

land, and that he had gone upon the adjoining land because the way was impassable from being overflowed by a river.—Taylor v. Whitehead, 2 Dougl. 475.

Rector's claim.

Implied graut.

(b) Jackson v. Stucey, Holt, 455. A rector cannot claim a right of way for the purpose of carrying away his tithe, unless by prescription or grant.

James v. Dods, 2 C. & M. 266. 4 Tyr. 101. The owner or occupier of the soil, provided he does it bona fide for the convenient management of the farm, has a right to vary and stop up a way by which tithe has been carried, although the alteration puts the tithe owner to great inconvenience by compelling him to use a more circuitous route for the purpose of carrying away his tithe .-- Id.

(c) Bullard v. Dyson, 1 Taunt. 279. But it is evidence of a drift-way for the jury to consider, together with other evidence.—Id. The extent of the usage is evidence of a right only commensurate with the user.—Id.

- (d) This right of way has been commonly termed a way of necessity; but it is, in fact, only a right of way by implied grant, for there seems to be no difference where a thing is granted by express words, and where it passes as incident to the grant by operation of law.—1 Wms. Saund. 323, note. See 4 Maule & Sel. 387.
 - (e) Holmes v. Goring, and same v. Elliot, 9 Moore, 166. 2 Bing. 76. (f) Clark v. Cogg, Cro. Jac. 170. (g) Beandley v. Brook, Cro. Jac. 189.

A conveyance of land by a trustee, to which there is no access but over the trustee's land, passes a

right of way.(h)

Where there is a private road through a farm, the parson may use it for carrying away his tythe, though there is another public way equally convenient. (i)

A way of necessity cannot be pleaded generally, without showing the manner in which the land over which the way is claimed is charged with it. (j)

A way of necessity exists after a unity of possession, which would otherwise have extinguished the

way, and a subsequent severance. (k)

A fee farm rent is a rent reserved upon a grant in As to grants fee,(1) provided it be not less than one fourth of of fee farm the value of the lands. If it be of less value, it is a rent charge.(m) This may be conveyed by grant, bargain, and sale enrolled, and lease and release, or to the terre-tenant by release only; but before the 4 and 5 Ann, c. 16, the rent by grant only would not pass.(n)

It seems that distress is not incident to a fee farm rent, unless it comes within the 4 G. II., c. 28;(0) to obviate all questions, therefore, it is prudent to insert the usual clauses of entry and distress, as in

the case of an annuity, or rent charge.

On a grant of a fee farm rent, without any deduction, defalcation, or abatement, whatsoever, the grantee is entitled to receive the full rent, without deducting the land tax.(p)_

An exclusive title to lease seats in the body of the As to grants church, may be maintained in virtue of a faculty, of pews. or by prescription, which is founded on the presump-

⁽A) Howton v. Frearson, 8 T. R. 50. So if the owner of two closes, Operation of having no way to one but over the other, part with the latter, without re-law. serving a right of way, it will be reserved to him by operation of law.—Id.

(i) Cobb v. Selby, 6 Esp. 103.

(j) Bullard v. Harrison, 4 M. & S. 387.

(k) Buckley v. Coles, 5 Taunt. 311.

(l) Fitz. N. B. 210.

(m) Co. Litt. 143.

(n) Taylor v. Vale, Cro. Eliz. 166.

(o) Bradbury v. Wright. Doug. 624.

o) Bradbury v. Wright, Doug. 624. (p) Id.

tion that a faculty had been heretofore granted. All other pews and seats in the body of the church are the property of the parish, and the churchwardens, as the officers of the ordinary, and subject to his control, have authority to place the parishioners therein.(q)

Seizin.

There can be no seizin of a pew unless it be annexed to a house, and then seizin of the house would be seizin of the pew; as seizin of the principal is that of the accessary. (r)

A pew cannot be granted to a man and his heirs, independently and without relation to a

house.(8)

Prescriptive right.

A prescriptive right must be clearly proved; the facts must not be left equivocal, and they must be such as are not inconsistent with the general right. In the first place, it is necessary to show, that the use and occupation of the seat has been, from time immemorial, appurtenant to a certain messuage, not to lands.(t) Secondly, it must be shown, that if any acts have been done by the inhabitants of such messuage, they maintained and upheld the right. (u)

To exclude the jurisdiction of the ordinary from the disposal of a pew, it is necessary not merely that possession should be shown for many years, but that the pew should have been built and repaired

time out of mind. (v)

Extra parochial persous.

Extra parochial persons cannot establish a claim in the body of a parish church, without proof of a prescriptive title, and therefore if they sue in the ecclesiastical court to be quieted in the possession of such seat, the court of Q. B. will grant a prohi-

(v) 1 T. R. 428.

⁽q) No precise rules are prescribed for the government of churchwardens in the use of this power, for its due exercise must depend on a sound judgment and discretion applied to the circumstances of the parish. -Report of Eccl. Comms. Feb. 1832, p. 48.

⁽r) See Rogers v. Brocks, 1 T. R. 431, n.
(s) Stocks v. Booth, 1 T. R. 432. In fact, it cannot be sold, let, or severed, from the occupation of the house, without a special act of parlia-

⁽t) The ordinary cannot grant a seat appurtenant to lands.
(u) 1 Phill. R. 325, 325.

bition: and it seems that such persons cannot establish such a claim even by prescription. (w)

When the occupier of a pew ceases to be an inhabitant of the parish, he cannot let the pew with, and thus annex it to, his house, but it reverts to the disposal of the churchwardens. (x)

(w) Byerly v. Windus and others, 5 B. & C. S. C. 7 Dowl. & Ryl. 564. (x) 1 Hagg, Eccl. R. 29.

HABENDUMS IN LEASES.

(1.)

Common Form of an Habendum.

To have and to hold the said messuage, tenement, or dwelling house, mill, buildings, pieces or parcels of land or ground, and all and singular other the premises hereby demised, or intended so to be, with their and every of their appurtenances, (except as hereinbefore is excepted,) unto the said C. D., his executors and administrators,(y) from the 25th day of March last past, for and during, and unto the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended, [determinable nevertheless as hereinafter mentioned,] but subject nevertheless to the provisoes, conditions, and agreements, hereinafter contained.

(2.)

Form of Habendum in the Lease of a water corn Mill and Land.

⁽y) It will not be repugnant if the word assigns is used, although the provise to prevent assigning be inserted in the lease, as it will be construed such assigns as the lessor may consent to.—See Wheatherall v. Gee, 2 Ves. jun. 504.

(3.)

Habendum in a Lease of Mines.

To have and to hold the said(z) mines of coal, Mines. and brick clay, and other clay, and all and singular other the premises hereby granted and demised, or mentioned, or intended so to be, with their, and every of their appurtenances, (except as aforesaid,) unto the said C. D., his executors, administrators, and assigns, from the —— day of, &c., for, and during, and unto the full end and term of fifty years thence next ensuing, and fully to be complete and ended, (determinable nevertheless as hereinafter mentioned).

(4.)

Habendum in an Underlease.

To have and to hold the said messuage, &c., Underlease. unto the said A.B., his executors, administrators, and assigns, henceforth for and during the several residues and remainders now to come, and unexpired, of the said several and respective terms of, &c., therein, other than and except the last day of each of the same terms respectively; subject nevertheless, by way of lien or charge, and not of contract, to the several yearly rents, reserved upon the said leasehold hereditaments respectively, and to the conditions and agreements under and subject to which the said leasehold hereditaments are respectively held, under and by virtue of the said several hereinbefore in part recited indentures of lease thereof respectively; nevertheless, the same leasehold hereditaments to be held upon the trusts, &c.

(5.)

Habendum in an Assignment of an Underlease.

TO HAVE AND TO HOLD the said piece or parcel Assignment of ground, messuage, or tenement, and all and of under-

(z) If the lands are also demised, it may run thus: "To have and to hold the said closes, pieces or parcels of land, ground, &c., and also the said mines of, &c., and all and singular other the premises hereby granted and demised, '&c.

singular other the premises hereinbefore assigned or expressed, or intended so to be, with their appurtenances, unto the said A. B., his executors, administrators, and assigns, for all the residue now to come, and unexpired of the said term of, &c., created by the hereinbefore in part recited indenture of lease; subject nevertheless to the rents, covenants, and agreements, in and by the said indenture reserved and contained, and which henceforth, on the part of the tenant or lessee, are and ought to be paid, observed, and performed.

(6.)

In a Demise for securing an Annuity.

Annuity.

To have and to hold the said lands, tenements, hereditaments, and all and singular other the premises hereinbefore demised, or expressed, and intended so to be, with their rights, members, and appurtenances, unto the said A. B., his executors, administrators, and assigns, from the day next before the day of the date of these presents, for, and during, and unto the full end and term of, &c., thence next ensuing, without impeachment of waste; but nevertheless, upon the trusts, and to and for the ends, intents, and purposes hereinafter expressed and declared, of and concerning the same; that is to say, &c.

(7.)

Habendum in an Assignment of a Lease and Stock in Trade, with the consent of original Lessor (an additional Rent being reserved).

Lease, and stock in trade.

TO HAVE AND TO HOLD the said hereditaments, and all and singular other the premises comprised in the said indenture of lease, with their, and every of their appurtenance, unto the said A. B. and C. D., their executors, administrators, and assigns, for all the residue now to come and unexpired of the said term of, &c., subject nevertheless to the rent, cove-

nants, conditions, and agreements, as well in and by the said indenture of lease as also hereinafter reserved and contained, and which from the, &c., ought on the tenant's or lessor's part to be paid, kept, observed, and performed; AND to have and stock to hold, take and enjoy, all and every the stock in trade, furniture, fixtures, and other things which are mentioned and specified in the said inventory or particular, hereunder written, or hereunto annexed, unto the said A. B. and C. D., their executors, administrators, and assigns, as his and their own proper goods and chattels.

(8.)

Habendum in an Assignment by a Tenant of several Houses, at an entire Rent as of one House.

To HAVE AND TO HOLD the said messuage or tene- Assignment. ment, and all and singular other the premises hereinbefore assigned, or expressed, and intended so to be, with their appurtenances, unto the said C. D., his executors, administrators, and assigns, henceforth for and during all the residue and remainder now to come, and unexpired of the said term of, &c., created by the said hereinbefore in part recited indenture of lease, freed and absolutely discharged of and from the said yearly rent of, &c., or any part thereof; but subject nevertheless to the covenants and agreements in the said indenture contained, (except those relating to the said yearly rent,) on the part of the tenant or lessee to be observed and performed, so far as the same are and ought from henceforth to be observed and performed, in respect of the said messuage and premises hereinbefore assigned, or intended so to be.

(9.)

Habendum in an Assignment of Leaseholds, for the Residue of two several Terms.

Assignment,

TO HAVE AND TO HOLD the said leasehold lands and hereditaments, and all and singular other the premises hereby assigned, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenants, unto the said A. B., his executor, administrators, and assigns, henceforth, for and during the several residues and remainders now to come, and unexpired of the said several and respective terms of —— years, and —— years of and in the same hereditaments respectively, and all other the terms and estates (if any) which the said granting and assigning parties respectively have in the said premises; subject nevertheless to the payment of the several yearly rents of £---, and £---, respectively, and also subject to the covenants, conditions, and agreements, under and subject to which the said leasehold premises are respectively held, under and by virtue of the said several hereinbefore mentioned indentures, bearing date respectively, on or about the, &c.

(10.)

Habendum in an Assignment of Leasehold, with Right of Renewal.

Assignment. (Renewal.)

TO HAVE AND TO HOLD the said messuage, &c., and all and singular other the premises hereby assigned or otherwise assured, or intended so to be, and every part and parcel of the same, with their, and every of their appurtenances unto the said J. C., his executors, administrators, and assigns, henceforth, for, and during all the residue and remainder of the said last mentioned term of —— years, and all other terms (if any) in the said premises, which are now to come and unexpired, and for, and during all the interest, benefit, and right of renewal of them,

the said R. S., and M., his wife, and K. L., party hereto, under the covenant or agreement for renewal of the said leases and terms respectively, and in as full, large, complete, and beneficial a manner, to all intents and purposes, as the said R. S., and M., his wife, and K. L., party hereto, can or may assign the same premises, and right, and benefit of renewal, respectively; subject nevertheless to the payment of the rent, and to the observance and performance of the several covenants, conditions, and agreements respectively reserved, and contained in the said in part recited indenture of lease, or which shall be reserved and contained in any new or other lease of the same premises, to be made or granted under the said covenant for renewal.

(11.)

Habendum in a Mortgage of Leases and Policy of Assurance.

TO HAVE AND TO HOLD all such, and so many, and Mortgage of such part and parts of the premises hereinbefore assigned, or intended so to be, as are comprised in, and intended to be demised by, the said hereinbefore in part recited indenture of demise, of the -day of -, unto the said C. D., his executors, administrators, and assigns, for all the residue and remainder now to come and unexpired of the said determinable term of —— years thereby created; subject to the yearly rent of £----, and to the payment of the heriots, and also subject to the suit of court, fines, services, and amerciaments, and to the covenants, provisoes, and agreements in the said hereinbefore in part recited indenture of demise of the —— day of ——, reserved, mentioned, and contained, on the part of the lessee, to be paid, performed, and kept. And to have and to hold all second such and so many, and such part and parts of the habendum. premises hereinbefore assigned, or intended so to be, as are comprised in, and intended to be demised by, the said hereinbefore in part recited indenture of

demise of the —— day of ——, unto the said C. D., his executors, administrators, and assigns, for all the residue and remainder now to come, and unexpired of the said determinable term of thereby created, subject to the yearly rent of £and to the heriots, and also subject to the suit, fines. services, and amerciaments, and to the performance of the covenants, provisoes, and agreements in the said hereinbefore in part recited indenture of demise of the —— day of ——, reserved, mentioned, and contained, or referred to, on the part of the lessee, to be paid, performed, and kept. And also to have, hold, receive, and take the said policy of assurance, and all moneys recoverable thereby, unto, and by the said C. D., his executors, administrators, and assigns, as his and their own policy and effects; but subject, as to all and singular the premises hereby assigned, or intended so to be, to the proviso or condition for redemption hereinafter contained.

Third habendum. (Policy.)

(12.)

Habendum in a Lease of a Cottage, Part of Waste, from the Lord of the Manor and Churchwardens of the Parish on the Part of the Freeholders, subject to Restrictions from taking Apprentices, &c.

Waste land.

To have and to hold the said part of the said messuage, &c., hereinbefore demised and leased, with their, and every of their appurtenance, unto the said C. D., his executors, administrators, and assigns, from the day of the date hereof, for, and during, and unto the full end and term of, &c., thence next ensuing, and fully to be complete and ended, if the said H. H., and also the said C. D., shall so long continue to occupy the said hereby demised premises, and shall not, during such occupation, without the consent of the churchwardens and overseers of the poor for the time being of the hamlet of B., take and keep any apprentice, or yearly servant; nor take any more lands from either

of the commons than is at present enclosed; nor without the consent in writing of the said H. H., or his assigns, and also of the churchwardens and overseers for the time being of the said hamlet of B., assign the term, estate, or interest in the hereby demised premises, or any part thereof; nor grant any underlease of the same premises, or any part thereof; nor take a lease of all or any part of any other tenement in the said parish of B., or any other parish; nor take down, pull down, or destroy, all or any part of the said hereby demised messuage, &c., or the buildings thereof; nor purchase any land, &c., of freehold, copyhold, or leasehold tenure, within the said parish of B.

(13.)

Habendum in a Demise of a Remainder for Life, expectant upon an Estate for Life.

TO HAVE AND TO HOLD the said messuage, &c., Remainder. unto the said A. B., his executors, administrators, and assigns, from and after the decease, or other sooner determination of the estate for life, of the said C. D., thenceforth for and during the term or time of, &c., fully to be complete and ended, if the estate and interest of the said E. F. in the same shall so long continue, and without impeachment of waste.

(14.)

Special Form of Habendum, so that a Person may have a Reversion in each of several Leases.

To have and to hold the premises demised Reversion. by each of the same underleases respectively henceforth, for and during such term or time as shall make up, and be equal to, a term or time to expire and determine at the end of four days next after the expiration by effluxion of time, of the term granted or expressed, or intended to be granted, by the

same underleases respectively, so that the said A. B., his executors, administrators, and assigns, may be entitled, by way of reversion, to hold and enjoy the premises comprised in, and demised by, each of the same underleases respectively, for all the residue of the time granted, expressed, or intended to have been granted by the same underleases respectively, and which is now to come, and unexpired; and for a further time of *four* days beyond the time appointed for the continuance of the same respectively.

OBSERVATIONS AND CASES.

THE habendum is that part of the lease which The harden begins with, "To have and to hold," and properly

succeeds the premises.

Its office is to name the lessee, and to limit with Its office. certainty the estate; it may also abridge or alter the generality of the premises.(a) But though the limitation in the premises cannot in general be controlled by the habendum in a deed, it may by a subsequent declaration of uses.(b)

If a man have a lease for years of land, and re- whom void. citing this by the premises of the deed, he grant all his estate in the land to have and to hold the land, or the term after his death, or for part of the time only; in this case the habendum is void, and the whole estate passes immediately by the pre-

mises.(c)

By a lease reciting that A., one of the lessors, was Extension an original lessee for the term of his natural life, and of habenthat B., the other, was a person to whom A. had granted a lease for a term of years certain, seven of which would remain unexpired on the 29th September following the date of the lease, A. and B. demised to the lessee the premises from the said 29th day of September, for and during the two several terms thereinbefore mentioned, (the rent to be paid to both the lessors and their respective executors,) if the lessee should so long live, and

⁽a) Shep. Touch. 75. In short, it fixes the quality and quantity of the estate, and ascertains the meaning of the premises, but cannot contradict or destroy them.—Cocken v. Heathcote, Lofft, 190. Thus, a lease to one dum. for life, habendum to his three sons successively, but omitting to mention the sons in the premises of the deed, was held to be for the life of the father only, and that the sons should not take in possession, or by way of remainder; for it being limited to the father for his life, that was a greater estate than for the lives of others, and the three sons were named as persons to have an estate, and not to make a limitation of an estate.-Windmore v. Hubbard, Cro. Eliz. 57.

⁽b) Rex v. Ashton Underhill, Cald. 416. (c) Shep. Touch. 114. S. P. Germain v. Orchard, 1 Salk. 346.

the term and estate of the original lessee should so long continue; under the lease there was subscribed a memorandum, providing that the rent reserved should be paid during the first seven years, to the intermediate lessee, and afterwards to the original lessee during the term of thirty years, if his interest should so long continue; and that the new lessee, his executors, administrators, and assigns, should have liberty to quit a part of the premises at any time during the term, upon giving twelve months' notice; it was held, that the lease and memorandum must be taken together, and construed as one entire instrument, and that the intention of the parties expressed by both, was to extend the habendum beyond the term of the life of the lessee, and give him a lease for thirty-seven years, determinable on the death of the lessor. (d)

Demise for life.

A demise by A. to B. for the term of his natural life, may enure as a demise either for the life of A., or of B., according to the circumstances; (e) and if the habendum be to B., his executors, administrators, and assigns, a presumption is created in favour of a devise for the life of A.(f)

⁽d) Weak d. Taylor v. Escott, 9 Price, 595. See observations on the head "Leases."

⁽e) Doe d. Pritchard v. Dodd, 2 Nev. & M. 838. 5 B. & Adol. 689. (f) Id.

LEASES.(g)

No precise form of words is essential to constitute What cona good lease; for whatever words are sufficient to stitutes a lease. show the intent of the parties, namely, that the one shall divest himself of the possession, and the other come into it, for any determinate term, will be well enough; and such words, whether they run in the form of a licence, covenant, or agreement, are of themselves sufficient, and will, in construction of law, amount to a lease for years, as effectually as if the most proper and pertinent words had been made use of for that purpose. (h) But the most usual words Words. to make a lease are, "demise, lease, set, and to farm let."(i) And as a lessee or tenant for years may assign, or grant his whole estate and interest, so may he under his possessory right, demise the premises, or any part thereof, for any less number of years than he himself holds the same; and such under-lessee, or sub-tenant, is compellable to pay the rent, and perform the convenants, according to the terms of such underlease.(j) But if such lessee Demise by by the underlease demises the premises for the full under-lessee term which he himself holds therein, this will in law operate as an absolute assignment of the whole of his estate and interest; and therefore it is usual in underleases, to demise for a certain term, wanting so many days, in order that the party may thereby be enabled at the end of his own term, either to

(g) A lease is the grant of the possession of lands or other things to a Definition person for life, years, or at will, and may be defined to be a contract or of a lease. agreement between the person making it, and him to whom it is made, for the possession and produce of lands, &c., in consideration of a rent or recompense to be paid for such possession and produce.—See 2 Bl. Com. 317. Touch. c. 15. Bacon on Leases; and see Watk. Pr., B. 2, c. 4.

(h) Bac. Abr. tit Leases (k). Cro. Eliz. 484. Roll. Abr. 847. Moor. 459. Noy, 57. 2 W. Black. 973. Any words sufficiently plain to indicate the contract for the possession and produce of the land on one side, and the recompense to be paid on the other, will amount to a good lease.

und the recompense to be paid on the other, will amount to a good lease.

—Cro. Eliz. 173. 5 Term. Rep. 163. (See p. 44.)

(i) Shep. T. 256.

(j) Bac. Abr. tit. Leases.

yield and surrender up the premises to the chief landlord, or obtain as an intermediate reversioner, a new demise thereof.

For what term a lease may be made.

A lease may be made either for life, that is either for the life of the lessee or another, or both, or for years; and it may be made for a certain number of years, as ten, an hundred, a thousand, or ten thousand years; or for months, weeks, or days, as the lessor and lessee do agree.(k) Leases for years do some of them commence in presenti; and some in futuro, at a day to come; and the lease that is to begin in futuro is called an interesse termini, or future interest. (1)

What must lease.

To make a good lease, there must be a lessor, concer to and he must be a person able, and not restrained to make that lease.(m) And, in general, every person being a natural and lawful subject, of sane memory and full age, may make a lease of lands.(n)

Commencement of leases for years and! for life.

A lease for years may be made to begin at a day to come, as at Michaelmas next, or three, or ten years after; or after the death of the lessor, or of H.; and this is as good as if it were to begin presently.(0) But a lease for life, of any thing whatsoever, whether it be in livery or in grant, cannot begin at a day to come, and therefore, if such a lease be made to have and to hold from Michaelmas next, or from the day of making it, (wherein the day is excluded,) or after the death of the lessor, or after the death of H. to the lessee for life, this lease is not good. For on a lease for life, as it goes to the seizin as well as to the possession, livery must be made as in a feoffment; a lease for life being a free-

⁽k) Shep. T. 267.
(l) Id. (See p. 9.)
(m) Id. As to leases by tenants in tail, ecclesiastical bodies, &c., under the various enabling and restraining statutes made in respect to these persons, see 2 Black. Com. 319. And on the subject of leases in general, see Noy, Max. c. 35. Shep. T. c. 14; and see Co. Lit. 43, 301; (and see observations bereto).

⁽a) Co. Lit. 42.

(b) It is necessary, however, that the time both of its commencement of its commencement and determinate or at least such as by and termination should be certain and determinate, or at least such as by reference to something else (as a time to be named by A.) may be reduced to a certainty.—Co. Lit. 45. Noy, Max. 86.

hold interest, and as such transmissible only by Seizin. livery of seizin, as any other estate of freehold. (p)But a lease for years passes only the right of possession, as contradistinguished from the seizin, and is completed by the entry of the lessee; and yet before the entry an interest passes to him, (called his interesse termini,) which the lessor cannot rescind. Before entry, however, the lessee cannot bring an action of trespass; nor is he until entry, if he takes at common law, (and not by way of use, (q)under the statute of uses,) capable of receiving a release of the reversion.

If a man have a lease for a hundred years, and he Residue of by deed grant to another all the residue of this term term. of years that shall be to come at the time of his death, this is void for uncertainty; but if one have such a term in land, and grant the land to another, to hold to him, after the death of the grantor, for one hundred years, or for two hundred years, these are good; and in the first case the lessee shall have fifty years, if there be so many to come of the hundred at the death of the lessor; and in the last case will have the land for the whole hundred years, or as many of them as are to come at the death of the lessor.

If a lease be made to one for years, or to one for Of leases in years determinable upon lives; and after a lease is made to another of the same thing, to hold from the end of the former lease, this is certain enough, and a good lease. So if a lease be made of land to one for life, or years, and after the same is granted to

entry, the possession being executed by the statute of uses

⁽p) Watk. Pr. 175. This seems to be grounded on the mode of granting Possession. freeholds at common law, where it was required that actual and present possession should be given of the thing granted, which could not be done of an estate which was not to commence till afterwards.—5 Co. 94. This Wording of rule of law renders it necessary that some attention be paid to the wording lease. of a lease for life, that its commencement may begin on the day it is dated; as, to commence from "henceforth," or "from the making hereof," and not "from the day of the date," which, by excluding the day on which it is made, would render the lease invalid.—See Lofft, Rep. 296.

1 Wils. 176. But in favour of leases made under powers in marriage settlements, this distinction has, in some cases, been disregarded by the courts.—See Doug. 53, 565. Cowp. 511.

(q) A cestui que use for years has a complete estate without actual Use.

another after the end of the former estate by surrender, forfeiture, or otherwise, this is good. So if a lease be made to one for life, and after the reversion therof is granted to another for life, when by death or otherwise it shall happen to be void, this

As to commencement ance of lease

All leases for years, whether they begin in presenti and continuor in futuro, must be certain; (that is,) they must have a certain beginning and a certain ending; and so the continuance of the term must be certain, or otherwise they will not be good; and yet if the years be certain, when the lease is to take effect in interest or possession, it is sufficient, for until that time it may depend upon an uncertainty; that is, upon a possible contingent precedent, before it begin in possession or interest, or upon a condition or limitation subsequent. But in case where it is to be reduced to a certainty upon a contingent precedent, the contingency must happen in the lives of the parties; and although there appear no certainty of years in the lease, yet if by reference to a certainty it may be made certain, it is sufficient.

If a person make a lease of his glebe for so many years as he shall be a parson, or make a lease of land until he be promoted to a benefice, or make a lease during the coverture of H., and M., his wife, or the like, this is void for uncertainty; but a lease for so many years as H. hath in the manor of Dale, or for so many years as H. shall name, or the like, these, and such like leases, are certain enough, and good; and in the first case, if livery of seizin be made upon it, perhaps by this it may be made good.

Requisites. of a lease.

All the things required to the well making of deeds in general, as writing, sealing and delivering, (r)

Statute of frauds. See p. 41, note (v).

(r) By 29th Chs. 2, c. 3, s. 1, all leases, estates, interests of freehold or terms of years, or any uncertain interest, of, in, to, or out of, any mes-mages, manors, lands, tenements, or hereditaments, made or created by livery and seizin only, or by parol, and not put in writing and signed by the parties so making or creating the same, or their agents thereunto law-fully authorised by writing, shall have the force and effect of leases or estates only at will, and shall not either at law or equity be deemed or taken to have any other or greater force or effect; any consideration for making such parol leases or estates to the contrary notwithstanding.

Section 2

By section 2, all leases not exceeding the term of three years from the

ability of parties, and the like, are required to the well making of a lease, whether it be by indenture

or deed poll.

A lease may be good of a thing notwithstanding Concurrent there be another lease in being, of the same land, at the same time, except in the cases before mentioned; and therefore if a lease be made for life or years to A., and after the lessor doth make a lease for years to B., this concurrent lease regularly is good, at the least for so many years of the second lease, as shall be to run after the first lease is determined.

There may be inserted in a lease what covenants covenants.

are agreed upon, but the lease is good without any

covenants at all.(s)

A lease is usually and properly in consideration of Reservation a yearly rent, and the best way of reserving such in lease. rent, it is said, is to reserve it generally by the words "yielding and paying therefore, yearly, during the said term, &c.," as the rent will follow the reversion.(t)

making thereof, whereupon the rent reserved to the landlord during such of statute. term shall amount unto two third parts at the least of the full improved value of the thing demised are excepted.

Notwithstanding the first section, a parol lease for more than three Tenancy years will create a tenancy from year to year: the intention of the statute from year to

being satisfied by its not operating as a term.—Clayton v. Blakely, 8 T. R. year.

3. S. P. Doe d. Rigg v. Bell, 5 T. R. 471.

The effect of the first, second, and fourth, sections of the statute of Construcfrauds, so far as they apply to parol leases not exceeding three years, is, tion of the that the leases are valid, and that whatever remedy can be had upon them statute of in the character of leases may be resorted to; but they do not confer the frauds. right to sue the lessess for damages for not taking possession.—Edge v. Strafford, 1 Tyr. 293. 1 C. & I. 391.

A landlord, who had demised premises for a term of years at £50 a year, What agree-agreed with his tenant to lay out £50 in making certain improvements ments are upon them, the tenant undertaking to pay him an increased rent of £5 a within stayear during the remainder of the term, (of which several years were unextute. pired,) to commence from the quarter preceding the completion of the work; it was held that the landlord, having done the work, might recover arrears of the £5 a year against the tenant, though the agreement had not been signed by either party; for that it was not a contract for any interest in or concerning lands within the statute, nor was it according to the statute or agreement "not to be performed within one year from the making thereof," no time being fixed for the performance on the part of the land-lord.—Donellan v. Read, 3 B. & Adol. 899.

The mere circumstance of the name of the party being written by him- Signature. self in the body of a memorandum of agreement for a lease, will not constitute a signature within the meaning of the statute.—Stokes v. Moore, 1 Cox, 219.

(s) See Shep. P. 50 & 51.
(t) Watk. Pr. 177. The rent may be reserved half yearly, monthly, or Reservation weekly, or even at unequal periods, and in uneven sums.

Additional Rents.

It is usual to reserve an additional rent per acre. (according to the value of the land,) for every acre of the meadow or pasture land ploughed up by the tenant without the landlord's consent, and these sums so reserved are considered as rents, not penalties,(u) and may be recovered by distress, along with the reserved rent, and the tenant can have no relief, but it is nevertheless proper to give an express power of distress. (v)

Proviso for re-entry.

When a proviso for re-entry is inserted in the lease on non-payment of rent at the appointed day, or upon assigning or underletting, and the rent be not paid accordingly, the landlord may bring an ejectment to turn him out of possession; but a court of equity will interpose on the tenant paying the rent and all costs, and revive the lease, as it would be contrary to all justice that the landlord should be permitted to take advantage of a slip in the payment of the rent. But it is otherwise if the tenant assign his interest, or underlease it; for it may be a great injury to the landlord to have a person introduced upon his estate to whom he is a total stranger, who may be a bad manager, and in insolvent If, therefore, the lessee assign or circumstances. underlet without consent, the landlord may bring an ejectment, and will recover; equity refusing to interfere in this case. (w)

Eventual

(u) Ralph v. Paterson. (House of Lords.)
(v) Rents reserved as penalties for not scouring hedges, laying lands down to grass, &c., are better omitted, as they are, in general, disproportionate to the damage; and if any attempt be made to recover them by action, the tenant may file a bill in equity for relief, so that there may be an action at law and a suit in equity depending at the same time, when the former only would be necessary, in case damages for these matters were secured by the tenant's covernants.

were secured by the tenant's covenants. (w) The landlord, however, has, in most cases, the option either to enforce the forfeiture or waive it, as the lease, in general, does not express that a forfeiture shall, at all events, accrue; but only that it shall be law-

Covenants.

Porfeiture.

Rents.

ful for the landlord to re-enter. The following are some of the usual covenants that the tenant shall preserve the timber; liberty for the landlord to enter and inspect the condition of the premises; for the in-coming tenant to enter at any times in the month of January or February, before the expiration of the lease, to plough the fallow land; and that such in-coming tenant shall have possession of a certain portion of the grass land on a certain day for sustaining his stock; and a power may be given to the landlord, particularly if he be desirous of reducing the quantity of tillage in the farm, to have the liberty of sowing grass seeds upon the away-going crop of the retiring tenant; or where

The covenants should in all cases be from the Covenants. tenant, with the person to whom the rent is reserved, (that is,) with the lessor, his heirs, and assigns, when he has the fee simple, or the freehold; but when he has only a term, or a chattel interest, then with him, his executors, administrators, and assigns.

(1.)

Lease, in Proceedings in Ejectment, on a vacant Possession.(x)

This indenture, made the —— day of ——, in the Date. year of our Lord 1838, between G. H., of, &c., of Parties. the one part, and C. D., of, &c., of the other part, WITNESSETH, that for, and in consideration of, the Testatumsum of five shillings, of lawful money of Great Britain, to the said G. H., in hand paid by the said C. D., at or before the sealing and delivery of these presents, the receipt whereof the said G. H., operative doth hereby acknowledge, he the said G. H., doth part. by these presents demise, grant, and to farm let, UNTO the said C. D., his executors, administrators, and assigns, ALL that messuage called, &c., with the appurtenances, situate and being in, &c., in the county of, &c., and which is now vacant and unoccupied: TO HAVE AND TO HOLD the said messuage, Habendum. with the appurtenances, from the [as in the power of attorney (y) last past, for, and during, and unto, the

the custom of the country does not give that crop, upon the wheat and barley which shall be sown in the year preceding the expiration of the lease. The tenant should also be restrained from overstocking the grass land in the winter and spring preceding the end of the lease; then follows the covenant for quiet enjoyment by the tenant during the term. In some leases this covenant only extends to the lessor himself, and those who claim under him; but it should be against all the world upon "the lessee paying the rents and performing the covenants;" so that if he should not pay the rent, or perform the covenants, and should be turned out of possession, he would have no claim to damages. Where it is the custom of the county for the tenant to have the away-going crop, he will be entitled to it, though not provided for.—See notes to p. 75. It should be made conditional, (that is, on payment of rent, &c.,) in the same manner as the covenant for quiet enjoyment; and it may be specified in the lease from what particular land it is to arise. Any thing which may not be thought of sufficient consequence to be made a distinct covenant, and all matters which are of a mutual nature between the landlord and the tenant, may be introduced after the covenants. (See p. 50, n. (b), and p. 69.)
(x) See pp. 25, 363, 382, and 383, n.
(y) See the head "Powers of Attorney."

Proviso.

full end and term of seven years from thence next following, and fully to be complete and ended; Reddendum yielding and paying therefore, yearly and every year, during the said term, to the said G.H., his executors, administrators, or assigns, the rent of one pepper corn, on the --- in each and every year, (if the same shall be lawfully demanded). Provided always, that if the said G. H., his executors, administrators, or assigns, shall at any time hereafter tender or pay, or cause to be tendered or paid, unto the said C.D., his executors, administrators, or assigns, the sum of sixpence, that then this indenture shall be void and of no effect, any thing herein contained to the contrary in anywise notwithstanding. In witness whereof the parties hereto have interchangeably set their hands and seals, the day and year

Attestation.

Sealed and delivered as the act and deed of G. H., by R. S., of, &c., gentleman, by virtue of a letter of attorney to him for that purpose made by the said G. H., bearing date the day of, --- instant, in the presence of,

first above written.(z)

(2.)

A general Precedent for Leases of Houses.

Parties.

Testatum.

This indenture, made the —— day of, &c., between A. B., (the lessor,) of, &c., of the one part, and C. D., (the lessee,) of, &c., of the other part; witnesseth,(a) that for and in consideration of the rent and covenants hereinafter reserved and contained, and which, by, and on the part of, the the said (lessee), his executors, administrators, and assigns, are henceforth and according to the true intent and meaning of these presents to be paid,

Attestation.

(z) If the landlord enters upon the premises himself, the attestation

Testatum.

will, of course, be different, as no power of attorney will be executed.

(a) Shortened, thus: "Witnesseth, that in consideration of the rent and covenants hereinafter reserved and contained on the part of the said (lessee), his executors, administrators, and assigns."

observed, and performed, he, the said (lessor), doth Operative by these presents demise, lease, set, and to farm let, UNTO the said (lessee), his executors, administrators, and assigns, ALL that, &c., together(b) with Description all ways, paths, passages, lights, easements, waters, and general water courses, drains, sewers, profits, commodities, words. privileges, advantages, and appurtenances whatsoever, to the said hereby demised premises belonging, or in anywise appertaining; TO HAVE AND TO Habendum. HOLD(c) all and singular the said premises hereby demised or mentioned, and intended so to be, with their and every of their appurtenances, unto the said (lessee), his executors, administrators, and assigns, from the —— day of —— instant, (or last past,) for and during, and unto the full end and term of years, from thence next ensuing, and fully to be complete and ended; yielding and paying(d) there- Reservation fore, yearly and every year during the said term hereby demised, unto the said (lessor), his executors, administrators, and assigns, the clear yearly rent of —, of lawful money of Great Britain, by quarterly payments, on the four most usual quarter days of payment of rent hereinafter mentioned, (that is to say,) on the —— day of, &c., on the day of, &c., on the —— day of, &c., and on the — day of, &c., in each and every year, by even and equal portions, free and clear as well from the Free from land-tax, as all and every other rates, taxes, charges, taxes. and assessments whatsoever, now rated, taxed,

⁽b) Or thus: "Together with all appurtenances whatsoever to the said Habendum.

premises belonging.

(c) Or thus: "To have and to hold the said premises hereby demised"

⁽c) Or thus: "To have and to hold the said premises hereby demised" unto, &c., "for the term of," &c.

(d) Or thus: "Yielding and paying, therefore, yearly, during the said Reddendum term, the clear yearly rent or sum of £——, on the —— day of, &c., and the —— day of, &c., in every year, free and clear of and from all taxes, rates, and assessments, whateoever, the first payment thereof to be made on, &c., next ensuing the date hereof." And if the rent is to be suspended by proviso for that purpose, in ease of fire add, "But subject, nevertheless, to the proviso or agreement hereinafter contained for the total or partial suspension of the said rent, in case of the destruction of the said demised premises, or any part thereof, by fire or otherwise. (The reservation, in all cases where the lessor has a fee simple, must be to him, "his heirs and assigns," and so if it be an estate pur autre vie; but when the lessor has only a chattel interest, the reddendum must be to him, his executors administration. tors, administrators, and assigns; but to prevent any error it may be reserved generally as directed in page 481.)

charged, or assessed, or which shall or may at any time hereafter, during the said term hereby demised, be rated, taxed, charged, or assessed upon the said demised premises, or any part thereof, whether parliamentary, parochial, or otherwise, the first payment thereof to commence and be made on the —— day of --- next ensuing the day of the date of these presents.

Covenant to pay the reserved rent.

And the said (lessee) for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree, (e) to and with the said (lessor), his heirs and assigns, in the manner following, (that is to say,) that he the said lessee, his executors, administrators, or assigns, (f) shall and will, from time to time, and at all times during the continuance of the said term hereby granted, (except as hereafter mentioned,) well and truly pay, or cause to be paid, unto the said (lessor), his heirs and assigns, the said yearly sum of —, of lawful money aforesaid, upon the several days, and in the manner hereinbefore mentioned or appointed for payment thereof, and according to the true intent and meaning of these presents. And (g) also, will well and truly pay, satisfy and discharge all and all manner of taxes, rates, duties, assessments, and impositions whatsoever, whether parliamentary, parochial, or otherwise; and whether the same now are, or shall, or may at any time or times hereafter, during the continuance of the said term, be lawfully assessed or imposed upon, or payable for, or in respect of the said demised premises, or any part thereof, or the

And to pay tares.

Sarety.

(e) If a surety be joined with the lessee as a party to the lease for better securing the rent, the covenant should be from him and the surety thus: "And the said (lessee) and (swrety), for themselves jointly and severally, and for their several and respective heirs, executors, and administrators, do covenant, &c., that the said (lessee), his executors, &c., shall and will,

Rent.

c. (The surety will be made a party of the third part.)
(f) Or thus: "Will pay, or cause to be paid, unto the said (lessee), his,

Taxes.

&c., the yearly rent hereinbefore reserved on the days and in manner hereinbefore mentioned."

(g) Or thus: "And also, will pay, or cause to be paid, during the continuance of this demise, the sewers' rate, and all other taxes, rates, charges, and assessments, whatsoever, which now are, or hereafter shall be, imposed, charged, or assessed, upon or in respect of the said premises, or any part thereof, or the rent thereof."

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yearly rent hereby reserved, or any part thereof, or chargeable upon the said (lessor), his heirs or assigns, in respect thereof, and whether any such future taxes, rates, duties, or assessments, shall be in the nature of those now in being or not, (the land tax and sewers' rate only excepted).(h) AND FUR- Lessee to THER, that he the said (lessee), his executors, ad-build houses ministrators, or assigns, shall, and will, at his and mises. their own costs, charges, and expenses, within the space of two years from the date thereof, cause to be erected and built two substantial messuages or dwelling houses, not inferior to the third rate or class of building, on the piece or parcel of ground hereby demised, with new, good, and sound materials of every sort and kind, to the satisfaction and good liking of the (lessor), his heirs and assigns, and in a proper and workmanlike manner finish the same: and in so doing shall and will expend the sum of £---, of lawful money of Great Britain, at least; and also, once in every fourth year of the term And to paint hereby granted, cause to be painted twice in oil, at in oil the outside the least, in a proper and workmanlike manner, all wood, &c. the outside wood and iron-work of, and belonging to, the said messuages or dwelling houses, so to be erected and built, and of, and belonging to, any other messuage or dwelling house erected, set up, or built, during the term hereby granted on the piece or parcel of ground hereby demised; and also once And to coal in every fourth year of the said term, cause to be wood and coal tarred, or painted twice in oil at the least, in a ironwork.

(h) Or thus, if a certain sum is to be expended: "And also, shall and Expendiwill, before the end of two years from the commencement of this demise, ture on the put the premises hereby demised into good and substantial repair; and premises in lay out and expend thereon, or in substantial improvements to the said improvepremises, exclusive of internal painting and papering, the sum of £100; ments and shall and will, within six calendar months next after the said premises shall be so repaired, render to the said (lessors), their heirs or assigns, or to their surveyor or agent, the several bills, documents, and other evidence, requisite to prove to their satisfaction that the aforesaid sum at the least hath been so expended and laid out; and thereupon the said (lessee), his executors, administrators, or assigns, shall be entitled to a certificate that the same hath been duly expended as aforesaid.' And then may follow shortly, thus: "And also, shall and will, during the continuance of the said term hereby granted, at his and their own costs and charges, keep the same premises, and every part thereof, in good and substantial repair and condition."

proper and workmanlike manner, all the outside wood and iron work, of, or belonging to, any building or erection other than a messuage or dwelling house, now, or at any time hereafter to be set up, erected, or built on the said premises hereby demised.

To repair generally.

AND ALSO, that he the said (lessee), his executors, administrators, and assigns, shall and will at all times, and from time to time during the continuance of the said term hereby demised, well and substantially repair, (i) and keep repaired, in a workmanlike manner, and with good materials, at his and their own proper costs and expenses (accidents, and damage happening by fire, storm, or tempest, only excepted,) [as well all and every the glass and other windows, window shutters, doors, locks, fastenings, bells, partitions, ceilings, floors, chimney pieces, shelves, pavements, privies, sinks, drains, cess pools, cisterns, pumps, wells, pipes, water courses, coppers, grates, stoves, and ranges, as] all and singular other the said premises hereby demised, which are not hereinafter covenanted or agreed to be repaired by the said (lessor), his heirs or assigns; together also, with all fixtures, buildings, improvements, and additions whatsoever, which at any time during the said term shall be affixed to, erected, or made upon the said demised premises, or any part thereof. And moreover, (j) shall and will paint, paper, and whitewash in a good and workmanlike manner, at the end of the first — and —

To paint.

Repairs.

(i) The usual covenant to repair, which follows the covenant to pay rent and taxes, may be shortly, thus: "And also will, during the term hereby granted, at his or their own costs and charges, well and sufficiently repair, uphold, support, amend, and keep, the said messuage, &c., and every part thereof, in, by, and with, all manner of necessary reparations and amendments whatsoever, when, where, and as often as the same shall be requisite during the said term; and the same being so well and sufficiently amended and kept in repair at the expiration orother sooner determination of the said term hereby granted, will peaceably and quietly yield up unto the said (lessor), his, &c., (with all and singular the fixtures and articles contained in the inventory hereunder written, in as good condition as the same now are, reasonable use and wear thereof, and damage by fire or tempest, in the mean time only excepted). (See the head Agreements, as to exceptions in case of fire; and see page 56.)

(j) Or thus: "And also, shall and will, in every fourth year of the said

Painting.

(j) Or thus: "And also, shall and will, in every fourth year of the said term, paint all the outside work and iron work belonging to the said premises, with two coats of proper oil colours in a workmanlike manner."

years of the said term, all and singular such parts of the said premises as are respectively now painted, papered, and whitewashed. And FURTHER, (k) that To insure he the said (lessee), his executors, administrators, against fire. and assigns, shall and will, within —— next eusuing the date hereof, at his and their own expense, and from time to time, during the continuance, and until the expiration of the term hereby granted, insure, or cause to be well and sufficiently insured, in some or one of the public offices in the city of London or Westminster, kept for the purpose of insuring houses from casualties by fire, all and every the messuage, or tenement and premises hereby demised, in the full sum of —, of lawful money of Great Britain. And shall and will upon request of the said (lessor), his heirs or assigns, produce the policy and receipt or receipts for such insurance thereon; and in default thereof, then that the said (lessor), his heirs or assigns, shall be at liberty to insure the same in the manner aforesaid, and from thenceforth pay the premium and duty payable from time to time thereupon, and charge the said, (lessee), his executors, administrators, and assigns, with such payment and interest thereon from the time of paying the same, which he the said (lessee) shall and will pay to the said (lessor), his heirs or assigns, at the quarter-day next following the payment of the said And in case the said And if pre. rent hereinbefore reserved. messuage, or tenement and premises, or any part there-mises of, shall at any time during the said term be destroyed, pen to be burned down, or damaged by fire, then it is hereby burnt down, agreed that all such sums of money which shall be paid by in-

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(k) Or thus: "And also, will forthwith insure the said messuage, build- Short coveings, and premises, to the full value thereof, in the —— Fire Office, in narts for in-London, in the joint names of the said (lessor), his heirs or assigns, and surance. the said (lessee), his executors, administrators, and assigns, and keep the same continually so insured during the said term; and will, upon the request of the said (lessor), his, &c., or his or their agent, show the receipt for the premium paid for such insurance for every current year; and also will, as often as the said messuage and buildings hereby demised shall be becaused down or demand by fire forthwith rejusted the same under the burned down or damaged by fire, forthwith reinstate the same, under the direction of the surveyor of the said (lessor), his, &c.; and also, that it shall be lawful for the said (lessor), his, &c., and his and their agents, at all seasonable times during the said term, to enter the said demised premises to take plans, and examine the condition thereof."

fice to be ap building.

surance of paid by the proprietors of the said insurance office, plied in re- by virtue or in consequence of any such policy or policies of insurance, shall forthwith, or with all convenient speed, be laid out, and applied in and towards the substantially rebuilding, reinstating, repairing, and making fit for habitation, such part or parts of the said demised premises as shall be so burned down, destroyed or damaged as aforesaid. And in case the sum or sums of money which shall be paid by the proprietors of the said insurance office, by virtue of any such policy or policies of insurance, shall not be sufficient for the rebuilding, reinstating, or repairing such part or parts of the said premises, as shall be so burned down, destroyed, or damaged by fire; then and in such case he the said (lessee), his executors, administrators, or assigns, shall and will advance and pay such sum of money, which, with so much as shall be paid by the proprietors of the said office, by virtue or in consequence of any such policy or policies of insurance as aforesaid, will be sufficient for rebuilding or substantially repairing, reinstating, and making fit for habitation, all such part or parts of the said premises as shall be so burned down, destroyed, or damaged by fire, and cause and procure all the same premises to be rebuilt, or in all respects to be substantially reinstated, and made fit for habitation, as soon as may be; and it is hereby declared, by and between the said parties hereto, that if any of the said hereby demised premises shall be burned down or damaged by fire, the said rent of £ --- hereinbefore reserved, or any part thereof, shall not cease or be discontinued, but shall be paid and payable in such and the same manner as if no such accident or

For lessor to damage by fire had happened; AND also, (1) that it

Landlord to enter and vjew.

⁽¹⁾ Or thus: "And further, that it shall be lawful for the said (lessor). his, &c., with workmen or others, once in every year during the said term, at reasonable and convenient times in the day time, to enter into and upon the said messuage or tenement, &c., or any part thereof, to view and examine the condition thereof; and if found necessary, upon such view and examination, to give the said (lessee), his executors, &c., or leave upon the premises for him or them, notice in writing to repair, amend, and make good,

shall be lawful for the said (lessor), his heirs or as-enter to insigns, or his or their surveyors properly authorised, surveyors, either alone or with workmen or others, twice in &c. every year during the said term, (or oftener if he or they shall see occasion,) at seasonable times in the day-time, upon giving three days' previous notice thereof to the said (lessee), his executors, administrators, or assigns, to enter into or upon the said messuage, tenement, or premises, or any part thereof, for the purpose of viewing and examining the state and condition of the same; and also, at any time or times within the last year of the said term, in like manner, and upon like notice, to enter into and upon the said premises, or any part thereof, in order to take a schedule or inventory of the fixtures then being thereupon; AND that in case any And to give defects or want of reparation of the said premises, notice of defects, and or any part thereof, or any removal of fixtures, shall for tenant to upon any such view be there found or appear, he, repair. the said (lessee), his executors, administrators, or assigns, shall and will, upon notice thereof in writing being left on the said premises, or given to him or them, cause the same premises forthwith, or otherwise, within the space of three calendar months next after the date and delivery of every or any such notice, to be well, substantially, and properly, repaired and amended in all things, and the said fixtures to be forthwith, or otherwise, within the said space of three calendar months then next following, reinstated and replaced; AND further, For lessor to that it shall and may be lawful for him, the said affix a notice (lessor), his heirs or assigns, or any of his or their premises servants or agents, at any time or times during the during the last three last three months next preceding the expiration or months of other determination of the said term of —— years hereby demised, to fix and set up a printed, written, or other notice, upon any conspicuous part of the said demised premises, (not being upon any window or door thereof,) that the said premises will be to be

all such repairs and amendments as shall be mentioned in such notice, according to the true intent and meaning of these presents.

letten at the expiration of the said term; and also, at any convenient time in the day-time, (giving at all times one day's previous notice thereof,) to enter into and upon the said demised premises, or any part thereof, to show the same to any person or persons who shall express a desire to become a tenant or tenants thereof; AND further, that he, the said (lessee), his executors, administrators, and assigns, shall not(m) nor will at any time during the continuance of the said term hereby granted, use, exercise, or carry on, nor permit or suffer to be used, exercised, or carried on, in or upon the messuage or tenement and premises hereby demised, or any part thereof, any or either of the businesses of a vinter, distiller, brewer, alehouse keeper, victualler, tripe boiler, butcher, baker, soap boiler, tallow chandler, tallow melter, oil refiner, sugar baker, blacksmith, whitesmith, coppersmith, working brazier, tinman, plumber, dyer, prussian blue maker, or any other dangerous, noxious, noisy, or offensive trade or business whatever, without the consent in writing under the hand of the said (lessor), his heirs or assigns; and shall not nor will make, or suffer to be made, at or upon the expiration of the said term, any public sale or auction upon the said premises, without such con-Liberty of sent in writing as aforesaid. And also, that the for landlord. said (lessor), his heirs and assigns, from time to time, and at all times during the continuance of this demise, shall have free liberty of water course in and through the said hereby demised premises, or And to enter any part of the same. And that it shall and may be lawful for the workmen of, or employed by, the said (lessor), his heirs or assigns, or his or their lessees of any messuage or tenement adjoining to the

When to be

for cleans-

ing, &c.

said premises hereby demised, or any of them, at

To prevent noxious trades.

⁽m) Or thus: "Shall not convert, use, or occupy, the said premises, or when to be used only as a dwelling-house. any part thereof, for any shop, warehouse, or other place for carrying on any art, trade, or business, or otherwise, than a private dwelling-house, without the consent in writing of the said (lessor), his," &c. (nor by building or otherwise stop or obstruct any light belonging to any building to the ground adjoining or contiguous, or suffer to be done anything which may tend to the annoyance or damage of the said (lessor), his, ifc., or any of his or their tenents) his or their tenants).

seasonable times in the day-time, to enter into and upon the said premises hereby demised, or any of them, or any part thereof, to repair such adjoining messuage or tenement; or to empty or cleanse the cess-pools, gutters, or drains of or belonging thereto, when, where, and as often as occasion shall require. And that if any dispute or controversy shall at any time or times, during the continuance of the said term, arise between the said (lessee), his executors, administrators, or assigns; and the tenant or occupier of any other of the said messuages or tenements adjoining thereto, relative to the drains, water courses, easements, privileges, or other the premises hereby demised, and other the said adjoining messuages or tenements, or any of them belonging, the same shall be from time to time settled and determined on the part of the said (lessee), his executors, administrators, or assigns, by the said (lessor), his heirs or assigns, in such manner as he or they shall think reasonable, and shall by any writing under his or their hand or hands award, order, or direct, in that behalf.

And also,(n) that he the said (lessee), his execu- Not to astors, administrators, or assigns, shall not, nor will, except to during the said term hereby demised, give, grant, wife or demise, let, set, assign, set over, or otherwise part children. with, either by act, permission, or sufferance of him or them, or by act of law, the present indenture of lease, or the premises hereby demised, or any part or parcel thereof, or his or their estate, term, or interest therein, or any part of the same, unto any person or persons whomsoever, (other than by will and testament to his or their wife, or respective wives, child, children, or next of kin,) without the special licence and consent of the said (lessor), his heirs or assigns, first had and obtained under his or their hand, or respective hands, for that purpose; but

⁽n) Or thus: "And will not during the said term, (or during the last Not to as—years of the said term,) sell, assign, demise, or make over, or part with, the said premises, or any part thereof, for all or any part of the residue of the said term, without the consent in writing of the said (lessor), his," &c. (See observations and cases under the head "Provisoes.")

which said licence shall not extend, or be deemed or

Explanation of the proviso to prevent assigning.

construed to extend, (unless the same be generally and unrestrictedly given,) to any future assignee, or to be considered as a waiver of the present covenant, for restraining the assignment of the present lease, or the term or interest which shall be then to come therein, but shall, from time to time, as and when the same shall be given, be limited, confined, and restricted, to the terms and true intent and meaning thereof, (any rule of law or equity to the contrary notwithstanding). Provided always, nevertheless, and it is hereby expressly declared and agreed by and between the said parties hereto, that the covenant hereinbefore lastly contained is, and is meant to be, to and for the sole end and intent that the said messuage, &c., may not be assigned, or letten to, or become the property of, any indigent or other improper person or persons, and not to restrain or prevent the said (lessee), his heirs, executors, administrators, or assigns, from letting, assigning, or parting with, or disposing of, the said premises, or any part thereof, to any respectable person or persons who may be desirous of taking the same; and that hence and therefore the said (lessor), his heirs or assigns, shall not, nor will arbitrarily, and without good and sufficient reason and cause assigned, withhold such consent as aforesaid; nor shall not, nor will demand or require any sum of money, reward, premium, or gratuity for giving or To yield up granting the same. And, (o) lastly, that the said at the end of (lessee), his executors, administrators, or assigns, shall and will, at the expiration or other sooner determination of the said term of —— years hereby demised, peaceably and quietly leave, surrender, and yield up to the said (lessor), his heirs or assigns, or to whomsoever else he or they shall direct, all and singular the said messuage, tenement, dwelling house, and premises hereby demised; together with the several fixtures and other things mentioned in the schedule hereunto annexed; and also all

other fixtures which shall then be thereupon or thereunto belonging, in a good state of repair and condition, accidents by fire and reasonable use and

wear thereof in the mean time excepted.

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Provided always (p) and these presents are upon Proviso for this express condition, nevertheless, that if the said non-payyearly rent or sum of —— hereinbefore reserved, ment of or any part thereof, shall be in arrears or unpaid by rent, &c. the space of ——days next after any or either of the days or times hereinbefore appointed for the payment thereof as aforesaid; (q) on if the said (lessee), his executors, administrators, or assigns, do not, or shall not, well and truly observe and perform all and every the covenants and agreements hereinbefore contained, which by him or them are hereby required, or otherwise, ought to be observed and Or if the said (lessee), his executors, administrators, or assigns, shall commit any act of bankruptcy within the meaning of the statutes made, or any other statute to be hereafter made in relation to bankrupts, whereon a fiat shall issue, and whereon he shall be found or declared a bankrupt; or if he or they shall make any composition with his or their creditors, for the payment of his or their debts, although a fiat in bankruptcy shall not issue against him or them; on if he or they shall make

(p) Or thus: "Provided always, and these presents are upon this con- Proviso if dition, that if the rent hereby reserved, or any part thereof, shall be rent in arunpaid for fifteen days after any of the days upon which the same ought to have been paid, (ulthough no formal or legal demand shall have been made thereof,) or in case of the breach or non-performance of any of the covenants and agreements herein contained, on the part of the said (lessee), his executors, administrators, and assigns, then and in any of such cases it shall be lawful for the said (lessor), his, &c., at any time thereafter, into and upon the said demised premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, re-possess, and enjoy, as in his or their former estate, anything hereinbefore contained to the contrary notwithstanding."

(q) Or say, "Shall remain unpaid for twenty-one days next after any of the said days whereon the same ought to be paid as aforesaid, being first lawfully demanded upon, or at any time after, the said twenty-one days, and not paid when demanded." (In this case the demand may be made at any time after the day of payment appointed by the condition, and will prevent that precision requisite in the demand, as stated in note(h) to p. 430.—See 5 Rep. 40; and see Goodright d. Hare v. Cator, Doug. 477. And by providing as in the words in the preceding note, "Although no formal or legal demand shall be made for payment," will render it unnecessary to make any demand whatever previously to bringing an eject. ment.—Doe d. Harris v. Masters, 2 Barn. & Cress. 490.)

any assignment of his or their estate and effects for

the benefit of his or their creditors; or if any writ or writs of execution at law or otherwise, shall issue against his or their person or persons, estate or estates, goods, chattels, and effects, which shall first happen, then and from thenceforth this present demise or lease, and the covenant for quiet enjoyment hereinafter contained, shall wholly cease and be void; and the said (lessor), his heirs or assigns, shall, or lawfully may, immediately upon, or at any time after any such breach, non-observance, or nonperformance, [or events as aforesaid,] enter into and upon the said hereby demised premises, or any part thereof in the name of the whole, and repossess, retain, and enjoy the same, as of his and their former estate; and as if these presents had not been made and executed, (anything hereinbefore contained to the contrary thereof in anywise notwithstanding). Provided always, and it is hereby agreed and declared, by and between the said (lessor) and (lessee), that in case the said demised premises, or any part thereof, shall at any time or times during the said term happen to be consumed, destroyed, or damaged by fire, storm, or tempest, so as to render the same uninhabitable or untenantable, then and in such case, the rent hereinbefore reserved for the same, (or a just and proportionate part thereof, according to the nature and extent of the injury which the said premises may have sustained,) shall be suspended or abated, and all remedies for recovering the same, until the said premises shall be rebuilt or repaired by the said (lessor), his heirs or assigns, and be in a fit state and condition for habitation; (r) AND(s) in case of any dispute or difference

Proviso in case of destruction by fire. (See p. 491.)

Exception as to pay-

Dispute.

(s) Or thus: "And in case of any dispute arising between the said parties, in regard to the amount of the abatement to be so made in the said rent,or the

⁽r) If the reddendum contains an exception as to payment of the rent during the time the premises shall be uninhabitable by fire, which is frement of rent quently inserted, the same will be sufficient to exonerate the lessee; yet, to prevent disputes, as to the abatement to be made in case of partial destruction, the mode here adopted for settling any question is most frequently used. (When a covenant is inserted as to abatement of rent, the abore proviso must be omitted.)

of opinion between the said parties, with respect to the time of such suspension, or the amount of such abatement respectively, or of both, the same shall at all times, and from time to time, be referred to the arbitration and determination of three indifferent persons, to be named in the usual manner of arbitration; and the decision of the said arbitrators, or any two of them, shall be final and conclusive upon the said parties hereto, and all persons claiming

under them respectively.

And the said (lessor), for himself, his heirs, and Covenant by assigns, doth covenant, promise, and agree, to and keep outside with the said (lessee), his executors, administrators, brickwork, plastering, or assigns, by these presents in manner following, &c., in re-(that is to say,) that he the said (lessor), his heirs, pair. and assigns, shall and will, from time to time, and at all times, during the continuance of the said term of —— years hereby demised, at his and their own proper costs and expense, maintain and keep all and singular the outside brick work, plastering, slating, tiling, and other outer parts of the said messuage or dwelling house, buildings, and premises hereby demised, in good, substantial, and tenantable repair in all things; and shall and will cause to be painted in good oil colour the outer doors, pales, rails, gates, window frames, and other the outer wood and iron work of the said premises, at the end of the first - years of the said term of —— years hereby granted. And if the said (lessor), his heirs or And to reassigns, shall neglect, after notice in writing from build. the said (lessee), his executors, administrators, or assigns, to repair or paint the said premises hereby demised, or any part thereof, in pursuance of the

period for which the said rent, or any part thereof, shall be suspended, the Arbitration. same shall be referred to the arbitrament of two indifferent persons, one to be named by each of the said parties, with power to choose an umpire; and if either of the said parties shall neglect to name an arbitrator on his part after fourteen days' notice in writing from the other of the said parties requiring him so to do, then the said dispute shall stand referred to the person who shall have been named by the party giving such notice; and in either of the said cases the determination of the said arbitrators or arbitrator shall be final and conclusive on both the said parties, in regard to the matters aforesaid, and their respective executors and administrators, and the award of the said arbitrators or arbitrator shall or may be made a rule of her majesty's court of -, at Westminster.

covenant hereinbefore contained, then, and so often as the same shall happen, it shall be lawful for the said (lessee), his executors, administrators, or assigns, to make the said repairs, or paint the part or parts of the said premises in respect of which such default shall be made, at his or their own costs and charges, and deduct and retain the sum or sums of money expended therein, out of the rent that may then be, or shall thereafter become due, the said (lessee), his executors, administrators, or assigns, showing and producing unto the said (lessor), his heirs or assigns, the vouchers or receipts of the said moneys so expended by them as aforesaid.

Lessor to re-build.

And also, that in case the messuage, tenement, or premises hereby demised, or any part thereof, shall at any time or times during the said term be consumed, destroyed or damaged by fire, storm, or tempest, he, the said (lessor), his heirs or assigns shall forthwith, (t) and with all proper and convenient speed, cause the same to be rebuilt or repaired (as occasion shall require) so, and in such good and substantial manner, that the same may be as commodious and convenient in all respects, as the same were before such destruction or damage happened. And also, that he the said (lessee), his executors, administrators, and assigns,(u) paying the yearly rent hereby reserved, on the days and in the manner hereinbefore appointed for the payment thereof, and performing the several covenants and agreements hereinbefore contained, and by him and them to be observed and performed shall, and lawfully may, peaceably and quietly have, hold, use, occupy, possess, and enjoy the said messuage or tenement, and all and singular other the premises hereby granted and demised, with their appurtenances, for

For peaceable enjoyment.

Surveyor.

(t) Or thus: "Forthwith reinstate the same, under the direction of the

surveyor of the said (lessor), his," &c.

(w) Or thus: "Paying the rent hereby reserved, and performing the covenants hereinbefore on his and their parts contained, shall and may Covenant to enjoy. peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption from the said (lessor), his, &c., or any other person or persons lawfully claiming by, from, or under, him, them, or any of them."

and during the complete term or period of years hereby granted thereof, without any lawful denial, hindrance, molestation, or interruption whatsoever, of or by him the said (lessor), his heirs or assigns, or any other person or persons, now or hereafter lawfully, equitably, or rightfully claiming or having any estate, right, title, trust, or interest from, under, or in trust for him, them, or any or either of them, or any of the ancestors of him the said (lessor), or by his, their, or any or either of their con-

sent, procurement, or privity.

Provided always, and it is hereby lastly agreed, Proviso for by and between all the parties hereto, that if the determinasaid (lessee), his executors, administrators, or lease at the assigns, shall be desirous to quit(v) the said mes-first seven suage, or tenement and premises hereby demised, years. at the end of the first seven or fourteen years of the said term of —— years hereby demised; (w) and of such his or their desire shall give six calendar months' notice in writing to the said (lessor) his heirs or assigns, next before the expiration of the said first seven or fourteen years, (as the case may be). Then and in such case, all arrears of rent being duly paid, and the said messuage or tenement, and all other the premises hereby demised, being in such repair as they are hereinbefore covenanted to be maintained in and left, this lease, and every covenant, clause, matter, and thing herein contained, shall, at the expiration of the first said

(v) Or say, "Of putting an end to this present demise."
(x) Or say, "And shall for that purpose deliver to the said (lessor), his, Notice of &c., or leave at his usual place or places of abode six calendar months' determining previous notice in writing of such his or their desire, and shall pay, or lease. cause to be paid, all arrears of rent, and perform all and every the cove. nants hereinbefore contained, and on his and their part and behalf to be

And if the power of determining the lease is to be mutual, add, " Or if When power the said (lessor) his heirs or assigns, shall be desirous of determining the of quitting said term hereby granted at the end of the said seven or fourteen years, is mutual. and such his or their desire, shall give unto the said (lessee) his executors, administrators, and assigns, such previous notice as is hereinbefore provided to be given by the said (lessee), his executors, administrators, or assigns; then and in such case, (or "then and in either of the said cases,") immediately after the expiration of the said term of seven or fourteen years, this present lease, and everything herein contained, shall cease, and be absolutely void to all intents and purposes whatsoever.'

seven or fourteen years of the said term hereby demised, whichever in the said notice shall be expressed, determine and be utterly void to all intents and purposes, in like manner as if the said whole term of —— years had run out or expired, or this present demise or lease had been made and executed for seven or fourteen years only, anything in these presents contained to the contrary thereof notwithstanding. In vitness, &c.

_(3.)

Lease of a Farm and Lands.

Parties.

This indenture, made the —— day of —— 1838, between A. B., (the lessor), of, &c., of the one part, and C. D., (the lessee), of ——, &c., of the other part,

Witnessing clause.

WITNESSETH, that for and in consideration of the yearly rent hereinafter reserved, and of covenants, conditions, and agreements hereinafter contained, on the part and behalf of the said C.D., his executors, administrators, and assigns, to be paid, kept, done, and performed, he, the said A.B., doth by these presents demise, lease, set, and to farm let, unto the said C.D. his executors, administrators, and assigns.

Farm and premises.

All that messuage or tenement, farm and lands, commonly called or known by the name of, &c., situate, lying and being at, &c., containing together in the whole by estimation, —— acres, be the same more or less, formerly in the possession of, &c., and now of the said, &c.; and also all those several pieces or parcels of land, commonly called or known by the names of, &c., lying and being in the said parish of ——, containing(x) together in the whole by estimation, 350 acres, (be the same more or less,)(y) late in the tenure or occupation of the said, &c.,

Names of fields.

Quantity.

⁽x) Or say, "Commonly called or known by the several names, and containing, by estimation, the respective quantities hereinafter mentioned, (that is to say,) Broadlands, containing, &c., together with all ways, rights, and appurtenances whatsoever, to the said demised premises belonging."

(y) The words "more or less" should be added to the specification of

together with all and singular ways, paths, passages, waters, water courses, conveniences, advantages, and appurtenances whatsoever to the said premises, or any of them, or any part thereof belonging, or

in anywise appertaining.

Except(z) and always reserved out of this present Exceptions. demise and lease unto the said A. B., his heirs and assigns, all, and all manner of timber and timber- Timber and like trees, the bodies of all pollard trees, felloes, trees. steddles and standards, and all other trees whatsoever, (a) now standing, growing, or being, or that shall at any time hereafter during this demise stand, grow, renew, increase, or be in or upon the said hereby demised premises, every or any part thereof; and also all mines, quarries, and pits of stone, Mines. gravel, sand, loam, marl, clay, and chalk, which now are, or shall hereafter be upon the said hereby demised premises, or any part thereof; together with With liberty free liberty of ingress, egress, and regress, to and of entry to for the said A. B., his heirs and assigns, his and of premises, their servants and workmen, with, or without, horses, down, &c. oxen, teams, carts, and carriages, at all or any time or times during this demise, to enter and come into and upon the said premises, or any part thereof, to see the state of the said demised premises, and the repairs thereof; and to fell,(b) cut down, hew, square, saw, cord, coal, make coal hearths, coal pits, and saw pits; and to dig, draw, cart, convert, and carry away the same, or any part thereof, at his and their own wills and pleasure, doing no wilful spoil or damage; and also, except free liberty to and for Hunting. the said A. B., his heirs and assigns, and his or their friends and servants, to course, hawk.

the quantity; for it seems a lessee might claim damages if he paid rent at Specificaso much per acre, and it should turn out at any subsequent period that tion. the number was overstated.

(b) Without the power to enter, and fell, and to hunt, &c., the lessor, by Trespass. so doing, might be considered by the lessee as a trespasser.

⁽²⁾ See "Exceptions," p. 440.
(a) Here may be added, "except fruit trees." If the lessee intends to Fruit trees. reserve the fruit trees, they should be named in the exception and reservaof trees, &c.—See Wyudham v. Way, 4 Taunt. 316; and see Bullen v.
Denning, 5 Barn. & Cress. 482.

Doing no damage to the corn or mowing grass, &c.

hunt, (c) shoot, fish, and fowl, in and upon the said \cdot demised lands and premises, or any part thereof, (not doing any wilful damage or spoil to the standing corn or mowing grass of the said C. D., his executors, administrators, or assigns).(d)

Habendum.

To have and to hold all and singular the said messuage or tenement, farm, lands, and premises, hereinbefore mentioned, and intended to be hereby demised, with their appurtenances, (except as before excepted,) unto the said C.D., his executors, administrators, and assigns, from the —— day of last past, for, and during, and unto, the full end and term of seven years from thence next ensuing, and fully to be complete and ended.

Reddendum

Yielding and paying(e) therefore, yearly and every year during the said term, unto the said C.D., his heirs and assigns, (f) the clear yearly rent or sum of £970, lawful money of Great Britain, free and clear of and from all taxes and deductions whatsoever, (except as hereinafter mentioned,) by four equal quarterly payments in each year, (that is to say,) the —— day of, &c., &c.

Eventual rents.

And also yielding and paying, yearly and every year during the said term, unto the said C. D., his heirs and assigns, over and above the yearly rent before reserved, at and upon the several days of payment aforesaid, by even portions, the sum of £10

Hunting.

(c) Right of hunting, &c., may be either reserved or an express covenant, may be inserted in the lease from the leasee to permit the land-

Planting.

lord to enter upon the premises for such purpose.

(d) If any portion of the land is to be taken for planting, add, "And also, except and always reserved unto the said (lessor), his heirs and assigns, such part or parts of the said lands or grounds hereby demised, (not exceeding fifteen acres,) as he or they shall think proper, to be planted with wood, with full liberty of access, jugress, egress, and regress, with all means needful for the purpose of inclosing, planting, preserving, and promoting the growth of the same, he or they making in respect thereof a just

and adequate abatement of or in the rent hereby reserved during the remainder of the term hereby granted " (See Exceptions, p. 440.)

(e) See p. 483, and note (d) to p. 487.

(f) Where the reddendum is to apply to several rents in respect of distinct parcels, it may be thus: "Yielding and paying yearly, and every year during the said term, unto the said (lessor), his heirs and assigns, for or in respect of the said lands and hereditaments in A. aforesaid, the yearly rent or sum of \mathcal{E} —, of lawful money of Great Britain; and for or in respect of the said, &c., in B. aforesaid, the yearly rent, &c., of like lawful money," &c; (and so on,) the said yearly rents or sums to be respectively paid and payable, free, &c. of like money for every acre of land that now lies ther sum for as meadow or pasture, hereby demised, which at any pasture land time or times during the said term shall be by any ways or means whatsoever, ploughed, digged, broken, set, or sown with any manner of corn, grain, or seed, unless by the leave and consent in writing, of the said A. B., his heirs or assigns, first obtained; and so after that rate for every greater or less quantity than an acre thereof which shall be so ploughed, digged, broken up, set, or sown, as aforesaid, without such consent as aforesaid. (q)

Provided always, (h) that if it shall happen that Proviso for

(g) The eventual rents may be reserved thus: "And also, yielding and Reddendum paying unto the said (lessor), his heirs or assigns, over and above the said of eventual rents hereinbefore reserved, the yearly rent or sum of £——, of lawful morents. ney aforesaid, at the rent days and in manner aforesaid, for every acre, and that in proportion for every less quantity than an acre of the said closes, For plough-pieces or parcels of ground hereby demised, or any of them, or any part ing closes of thereof, which he the said (lessee), his executors, administrators, or assigns, land. shall at any time or times during the said term, after the expiration of the first ten years thereof, plough, or use, or have in tillage, or in course of tillage, over and above the quantity of —— acres, (being two thirds in quantity, or thereabouts, of the said closes, pieces or parcels of ground). And also for For raising every acre, and that in proportion for every less quantity than an acre, of extra quancorn or grain, which he, the said (lessee), his executors, administrators, or tities of assigns, shall at any time or times during the said term, take from, off, grain. or bave upon the said lands or grounds, or any part thereof, contrary to his covenant hereinafter in that behalf contained, without the license or consent of the said (lessor), his heirs or assigns, in writing, for that purpose first had and obtained; the first payment thereof first had and obtained; the first payment thereof respectively to begin and be made on such of the said rent days as shall next happen after such ploughing or using, or having in tillage, or taking a crop of corn or grain as aforesaid. And also yielding and paying at the said days of payment of rent, and in manner aforesaid, the like yearly rent or sum of £—— for ing ancient every acre, and that in proportion for any less quantity than an acre of the meadow or ancient pasture ground, (not parcel of the said common or waste enclosed lands aforesaid) parcel of the said demised premises which he the said (lessee), his executors, administrators, or assigns, shall at any time or times, during the said term, pare, burn, plough, rive out, dig up, or convert into tillage, without the license or consent of the said (lessor), his heirs or assigns, in writing for that purpose, first had and obtained; the first payment to begin and be made on such of the said rent days as shall next happen after such paring, burning, ploughing, riving out, digging up, or converting into tillage, as aforesaid.

(k) This proviso may be inserted at the conclusion of the form of lease, Proviso for or before the covenant for lessee's quiet enjoyment, and it may be thus: re-entry. Provided always, nevertheless, and these presents are upon condition, that if the said yearly rents or sums hereby reserved, or any of them, or any part or parts thereof, shall at any time or times during the said term hereby granted be behind and unpaid by the space of thirty days next after either of the said rent days whereon the same are hereinbefore by these presents made payable; or if the said (lessee), his executors, &c., shall at any one time during the said term, after the expiration of the tenth year thereof, (without such consent as aforesaid,) plough, or use, or have in tillage, or in course of tillage, more in quantity than —— acres of the said lands and grounds hereby demised on shall at any time. the said lands and grounds hereby demised, or shall at any time or times take from, off, or have upon the lands or grounds, or any of them, or any

re-entry in default of payment of rent, or in non-percovenants.

the said yearly rent or sum of £970, or any part thereof, or the said additional rent or sum of £10 an acre, in respect of ploughing, breaking up, or sowformance of ing, in case the same shall become due and payable, or any part thereof shall be behind and unpaid, after either of the said day or days of payment, on which as aforesaid the same are hereinbefore respectively reserved for the space of twenty-one days next after the same shall become due; or if the said C.D., his executors or administrators, or any of them, shall, or do at any time or times during the said term of even years, demise, let, set, grant, bargain, sell, assign over, or otherwise pass away the said messuage or tenement, farm, lands, and premises, or any part thereof, or this present lease, or his or their estate or interest therein, or in the premises, or any part thereof, to any person or persons whomsoever, without the consent, license, and agreement of the said A. B., his heirs or assigns, first had and obtained in writing, under his or their hands; or shall or do commit any breach of, or make default in, the performance of any of the covenants or agreements hereinafter contained, which is on his and their parts and behalf, are or ought to be observed, performed, fulfilled, and kept; THAT then, and at all times afterwards, in any of the cases aforesaid, it shall and may be lawful to and for the said A. B.. his heirs or assigns, or any of them, into the said demised premises with the appurtenances to reenter, and the same to have again, retain, and enjoy, as in his and their first and former estate and estates. anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

> part thereof, any crop of corn or grain contrary to his covenant hereinbefore in that behalf contained, or shall at any time or times, pare, burn, plough, dig up, rive out, or convert into tillage, any meadow or ancient pasture ground, parcel of the said demised premises; then and in any of such cases, it shall and may be lawful for the said (lessor), his heirs or assigns, into and upon the said hereby demised premises, or any part or parts thereof, in the name of the whole, to re-enter, and the same, and every part thereof, from thenceforth to have again, re-pessess, and enjoy, as in his or their first or former estate, any thing in these presents contained to the contrary thereof in anywise notwithstanding.

And the said C.D., for himself, his executors, Covenant administrators and assigns, and every of them, doth of rents. covenant, promise, and agree, to and with the said A. B., his heirs and assigns, by these presents, that the said C. D., his executors, administrators, and assigns, or some of them, shall and will, yearly and every year during the said term of seven years, well and truly pay, or cause to be paid, unto the said A. B., his heirs or assigns, or some of them, as well the said yearly rent or sum of £970, hereinbefore reserved, and every part thereof, as the same shall become due and payable; as also(i) the said additional rent or sum of, &c., per acre, in respect of ploughing, breaking up, or sowing, in case the same shall become due and payable, on the respective days of payment, at and which the same are hereinbefore respectively reserved or mentioned to be paid as aforesaid, and according to the true intent and meaning of these presents.

And also shall and will pay, bear, and discharge Taxes. all and any the taxes, tithes, charges, assessments and impositions, which now are, or which shall or may be taxed, charged, assessed, or imposed, for, or in respect of the said demised premises, or any part thereof, by authority of parliament or otherwise, save and except such as may be hereafter imposed

upon the landlord by act of parliament.

And also that he the said C. D., his executors, And to readministrators, and assigns, or some of them, shall same being and will, at his and their own costs and charges, (the first put in same having been first repaired by the said A. B., his heirs and assigns, agreeable to his covenant hereinafter contained,) when and as often as need or occasion shall be or require, well and sufficiently repair,(j) amend, maintain, uphold, and keep

(i) Or more concisely thus: "The yearly rents hereby respectively Rents. reserved and made payable as aforesaid," at, &c.

⁽j) This covenant for repairing the house, buildings, and fences, may Repairs. contain an exception as to lasting repairs usually done by the landlord, as walls, timbers, and roofs; (but see p. 490;) and an exception may be made in case of damage by fire, or destruction by tempest, because if the lesses covenants generally it has been held he would be compelled to rebuild them where no provision is made in regard to insurance.—See p. 56, p. (i). 56, n. (j).

repaired, the said messuage or tenement, barns, stables, and buildings, hereby demised, in, by, and with, all and all manner of needful and necessary reparations and amendments. And also all and every the hedges, ditches, gates, bars, stiles, posts, pales, rails, fences, and enclosures, of, and belonging to, the said demised lands and premises, (for the doing whereof the said C. D., his executors and administrators, are to have rough timber assigned and allowed to him and them, as hereinafter is And in such mentioned). And the same as well and sufficiently repaired, amended, preserved, and kept together, with the possession of all and singular the said demised premises, at the end, or sooner determination of this present lease, shall and will peaceably and quietly leave, surrender, and yield up to the said C. D., his heirs or assigns. (k)

repair to yield up.

To imbarn on the premises, and expend, &c., thereon.

And also, that he the said C.D., his executors, administrators, and assigns, shall and will, yearly and every year during the said term, stack, house, imbarn, and lay in the said barns, and other the said demised premises, or some part thereof, all such wheat, rye, barley, oats, pease, beans, tares, podware, corn, grass, seeds, and hay, as shall from time to time grow in and upon the said demised lands, or any part thereof; and all the said podware, hay, and straw, shall and will fodder out and spend in and upon the said demised lands and premises, and not elsewhere; as also all the dung, muck, greet, sulledge, compost, and manure, which shall arise, or be made in or upon the said demised premises, where the same shall be most required, except the hay, straw, muck, dung, compost, and sulledge, which shall arise and be made therefrom during the last year of

Insurance.

⁽k) Here may be added a covenant to insure the buildings, see p. 491, or part of them, thus, "And also that he the said (lessor), his, &cc., shall and will forthwith insure, or cause to be insured, in some well established insurance office in London or Westminster, or the said county of, &c., the said, &c., and, &c., belonging thereto, from damage by fire, to the extent, amount, or value of, &c., and shall and will keep the same so insured during the said term; and in case of any such damage shall and will rebuild or repair the same, as the case may be, to the extent amount, or value of the sum which shall be due for such insurance as aforesaid.

this demise, and which shall be left upon the said premises for the use and benefit of the said A. B., his heirs or assigns, he the said C. D., his executors, administrators, or assigns, being paid and allowed

for the same, as hereinafter mentioned.

And also, that he the said C. D., his executors, and to proadministrators, and assigns, shall and will, from time trees. to time, and at all times during the said term of seven years, well and carefully preserve and keep or do his and their utmost endeavour to preserve and keep the fruit trees now planted or growing, and which during this demise shall be planted or set to grow in the orchards and grounds before demised, from all hurt, bite, destruction, damage, and spoil of cattle or otherwise. (1) And if it shall happen that any of In case of the said fruit trees now planted or growing, or which fruit trees hereafter shall be set or planted in the said orchards dying. or grounds, shall at any time or times during the said term, die, starve, perish, or decay, that then he the said C. D., his executors, administrators, and assigns, shall and will, at his and their own costs and charges, at the next seasonable time in the year afterwards for good planting, plant and set to grow in the room and stead of every tree so dying, starving, perishing, or decaying as aforesaid, one other good young tree, and likely to grow and thrive, of the same or better fruit and kind than the tree so dying, starving, perishing, or decaying was of; and the same so planted shall and will also afterwards during the continuance of this demise, well and carefully preserve and keep from all wilful, voluntary, and negligent hurt, spoil, and destruction, by cattle and otherwise.

And also that the said C. D., his executors, admi- Lesses at trators, and assigns, shall at the end and expiration, term toleave or other sooner determination of this lease, leave at so many least 30 acres of the said demised lands in good hus-ground

⁽I) According to the case of Glenham v. Hanby, 1 Ld. R. 739, and Fences. Clithero v. Higgs, Sir Wm. Jones, 388, it seems that a lessee (in the absence of any express provision) is not bound to provide fences to preserve trees (excepted out of his lease) from being bitten by his cattle, but that the lessor should himself protect them.

hop plants.

with woollen rags,

1500 lbs. upon each

acre.

stocked with band-like and orderly manner, planted and stocked with good and well conditioned hop plants, or hop sets, of three years' growth or planting at the least, and carefully and in a husband-like manner preserve And to cover and keep the same. And also that he, the said C. D., his executors, administrators, and assigns, shall and will, during six of the seven years of this demise, cover one fourth part of the said land, so to be planted with hop plants as aforesaid, with good woollen rags, after the rate of fifteen hundred weight upon each acre.

Not to sow hemp, &c.

And also that he the said C. D., his executors, administrators, and assigns, shall not nor will sow any hemp or flax, nor plant or set more than acres of potatoes in any one year of the said term. And also that he the said C. D., his executors, administrators, and assigns, shall and will, yearly and every year during the continuance of this demise, set, spend, and spread, in and upon one third part of the meadow land hereby demised, twenty cart loads of good rotten dung, or 50 bushels of ashes upon each agre thereof. (m)

And during six years make so many acres in good law for wheat, four times ploughed, and to be manured with dung.

And also that he the said C. D., his executors, administrators, and assigns, shall and will in the sixth year of the said term, make thirty acres of the summer fal. arable land hereby demised, a good summer fallow for wheat, four times ploughed at the least, and manured with two hundred bushels of lime, thirty cart loads of good rotten dung, or forty cart loads of good compost, (containing dung and mould,) upon each acre of the said fallow.

Manure for wheat season in seventh year.

And also shall and will prepare, in the seventh year of the said term, a like quantity of arable land, in the same manner, and with the same quantity of manure for a wheat season.

Waste land.

(m) See note (i) to p. 505, as to the number of acres of the enclosed waste lands to be ploughed, the covenant for which may be added thus: "And also, that he, the said (lessor), his, &c., shall not nor will at any one time during the continuance of the said term hereby granted, after the expiration of the tenth year thereof, plough, or use, or have in tillage, or in course of tillage, more than the quantity of -- acres (being two thirds in quantity or thereabouts) of the said closes, pieces or parcels of ground hereby demised, without the license or consent of the said A. B., his heirs or assigns, in writing, for that purpose first had and obtained."

And also shall and will, in the last year of the said Turnips. term, leave six acres other part of the said land hereby demised, well manured for, and sown with, turnips.(n)

And also shall and will permit the succeeding And to pertenant, at the end of the said term, to sow any part ing tenant of the land whereon corn shall be growing, with to sow.

good grass, and other seed, as he shall see fit.

And also that he the said C. D., his executors, And to haradministrators, and assigns, shall and will, without in same being paid for the same, harrow and roll in the same, without being paid. and carefully preserve the same, after the corn is carried off.

And also that he the said C. D., his executors, And to preadministrators, and assigns, shall and will preserve ber. all the timber trees, willows, hedge-rows, and living fences, which are now standing, or shall be hereafter planted, from damage by cattle or otherwise; and shall and will plant and supply those parts of the said fences(o) which shall be defective, with good quicksets, and make proper ditches adjoining thereto, so as not to disturb or take away the ground so near to any of the hedges, living fences, trees, or willows, as might injure the same.

And also that he the said C. D., his executors, Lessee not administrators, and assigns, shall not nor will fall to fall any of the unany of the underwood, shaws or hedge-rows, of less derwood of than seven years' growth, of, or belonging to, the seven years' said demised premises; and shall and will, before growth. any such fall thereof, give or leave one month's notice in writing, to or for the said A. B., his heirs or assigns, of his or their intention to fall or cut down the same, to the end that the said A. B., his heirs or assigns, or his or their agents or stewards, or any of them, may mark out all such willows,

⁽a) If a covenant is to be added to prevent the ploughing up of ancient Ancient meadow land, (see note (g) to p. 505,) it may be thus: "And also, that he, meadow. the said (lessee), his executors, administrators, or assigns, shall not nor will, at any time or times during the said term, pare, burn, plough, rive out, dig up, or convert into tillage, any meadow or ancient pasture ground, parcel of the said demised premises, without the license or consent of the said (lessor), his heirs or assigns, in writing," &c. (o) See note (l) to p. 509.

waverers, and spears of oak, ash, elm, or other small stuff, as he, they, or any of them shall think proper and fit to be left standing and growing in or upon

the said woods, shaws, or hedge-rows.(p)

And before a certain and fence, &c.

And also that he the said C. D., his executors, time make a administrators, and assigns, shall and will, begood hedge, fore the 25th day of April, in the same year in which any fall of underwood shall be made, make a good hedge and ditch fence round each space where such fall is made; and shall and will clear all the ware and underwood which shall be fallen before the —— day of May following; and shall and will, in the month of November in the same year, plant and fill up, at his expense, the same space of ground with good ash and willow plants, the said ash and willow plants being paid for by the said A. B., his heirs or assigns.

Not to grub up any hedge.

And also that the said C. D., his executors, administrators, and assigns, shall not nor will grub up or remove any hedge or fence without the consent of the said A. B., his heirs or assigns, first obtained in writing.

And to peragriculture.

And also shall and will permit and suffer the said mit lessor to C. D., his heirs or assigns, or his or their agents or inspect preservants, to inspect the said messuage or tenement, mises, and the mode of lands and hereditaments, hereby demised, twice in each year, to see if the same messuage be in good repair, (q) and the said lands cultivated according to good husbandry, and the best system of agriculture

(p) Or, "And also, shall not nor will, at any time during the said term Covenant by lessee not to destroy timber.

(p) Or, "And also, shall not not will, at any want during the lessee not to destroy granted, hew, fell, cut down, lop, top, stub up, or destroy, or cause or suffer to be hewn, felled, cut down, lopped, stubbed up, or destroyed, without the consent in writing of the said A. B., his beirs or assigns, any here. of the timber, timber-like or other trees, hereinbefore excepted, other than such as shall have been assigned or appointed to him or them by the said A. B., his beirs or assigns, for the repair of the said premises, or any part thereof; nor cut down any alders, willows, sallows, pollards, hazels, thorns, bushes, springs, quicksets, wood, or underwood, which are now growing and being on the premises, save only and except for necessary repairs and fences to be allowed and set out by the said A. B., his heirs and assigns." (Without a provision similar to this, a bad disposed tenant might cut down the best hedges in a farm where shelter is requisite: the lease should always express that the thorns to be cut for repairing the hedges for shall be resigned by the lesson or his agents.

Inspection.

hedges, &c., shall be assigned by the lessor, or his agents.)
(2) This covenant, for permitting the landlord to enter upon the premises and inspect the condition and management thereof, should be inserted in every good lease.

then practised in the said parishes of, &c., &c., or

the neighbourhood thereof. (r)

And further, that it shall and may be lawful to And to perand for the said A. B., his heirs and assigns, but at bringactions his and their own costs and charges, as often as he of trespass or they shall think proper, in case any person or &c. persons shall, at any time or times during this demise, hawk, hunt, course, fish, fowl, or otherwise sport in, over, or upon the said demised premises, or any part thereof, from time to time to bring any action or actions, suit or suits, or otherwise prosecute and proceed against all and every such person or persons, in the name or names of the said C. D., his executors, administrators, or assigns, and that he the said C. D., his executors, administrators, and assigns, shall not, nor will at any time release, or otherwise discharge, such action or actions, suit or suits, or other proceedings, without the consent in writing of the said A. B., his heirs or assigns.

And further, that he the said C. D. his executors, And to warn administrators, and assigns, shall and will, from time passers. to time during the said term, warn off from the said demised premises, by notice in writing, under his or their hand or hands, all and every person or persons who shall at any time trespass, or come and be upon the said premises, or any part thereof, for the purpose of hawking, hunting, coursing, fishing, fowling, or otherwise sporting thereupon, and immediately thereupon give the said A. B., his heirs

and assigns, notice thereof.(s)

(r) If the tenant change the known and established rotation of crops, Crops. and the mode of cultivating land of the same quality in the neighbourhood, to the prejudice of the estate, he may be sued on a breach of the custom.

As to allowing in-coming tenant's servants room in the house and pre- And room mises, add, "And also, shall and will provide for the next succeeding tenant for servants or tenants in the said farm house, or homestead and outhouses, on the and horses

⁽s) If a covenant be added for permitting landlord to enter during the Succeeding last year of the term to plough fallows, it may be thus: "And that he, the tenant to said A. B., his heirs or assigns, or his or their succeeding tenant or enter. tenants, shall and may enter upon the said lands and grounds, or any part or parts thereof, to plough the lands to be left to be fallowed at any time from and after the commencement of the said last year of the said term hereby granted, and to plough the lands so to be left in clover at any — day of —— in the same year.'

Lessor covenants to lay sum within a certain time in im-

And the said A. B., for himself, his heirs, and out a certain assigns, and every of them, doth hereby covenant, promise, and agree, to and with the said C. D., his executors, administrators and assigns, and every of provements. them, in manner following; (that is to say,) that he the said A. B., his heirs or assigns, shall and will, within six months from the date hereof, lay out in the improvement and repairs of the said messuage, tenement, and buildings, a sum of money not exceeding \mathcal{L} —; and shall and will, from time to time, and at all times during the said term, withinmonths next after every request made to him or them, or left to, for, or with him or them, in writing, of the want of rough timber for the necessary repairing, amending, and keeping in repair the said messuage or tenement, barns, stables, out-houses and building before demised, or any of them; and the gates, bars, stiles, posts, pales and rails, of and belonging to the said demised lands and premises, or any of them, allow, provide, and assign, to and for the said C. D., his executors, administrators, and assigns, good competent and sufficient rough

timber for repairs.

And to supply rough

And to pay lessee for hay, straw, &c., left about premises at a valuation.

executors, administrators and assigns.(t) And also that he the said A. B., his heirs or assigns, shall and will pay and allow unto the said C. D., his executors, administrators, or assigns, for the hay, straw, haulm, and fodder, at a feeding price; and also for the dung, muck, and sulledge, which shall be made and left on the said demised lands and premises, the last year of the said term,

timber of the trees growing on the said demised lands for the doing thereof, the same rough timber

to be felled, fetched, taken and carried away, by and at the costs and charges of the said C. D., his

time.

after certain lands and premises hereby demised, necessary and reasonable rooms and accommodation for his, her, or their servants and horses, from and after the said respective times for entering upon the lands so to be left fallowed and in clover lay, without demanding or receiving any abatement of rent, or allowance for the same; and shall and will permit and suffer such next succeeding tenant or tenants to carry out the dung from the farm yards, and other parts of the premises hereby demised, to and upon the lands so to be left for fallow and in clover lay, or any part thereof."

1mprovements.

(f) If any improvements are to be made by the landlord, it is usual for the lessee to covenant for drawing the materials.

so much money as the same shall be valued and adjudged to be worth by two indifferent persons, one to be chosen by each party in the usual course

in such cases pursued.

And also that he the said A. B., his heirs and And pay for assigns, shall and will pay and allow unto the said hop poles, C. D., his executors, administrators, or assigns, so &c., at a valuation. much money for the underwood growing and being on the said demised woodlands, and the hedge-rows, hop-poles, fallows, manures, mendments, half mendments, and dung mixens and yards, at the end, expiration, or sooner determination of the said term of seven years, as the same shall be valued and adjudged to be worth by two indifferent persons, to be chosen as aforesaid.

And also that it shall and may be lawful to and for And for lesses to have the said C. D., his executors, administrators, and the use of assigns, from and after the end of the said term of threshing seven years, until the —— day of —— next follow- corn grown ing, to have the reasonable use of the barns, barn year. yards, and rick staddles, hereby demised, to lay, thresh, clean, and carry away the corn and grain which shall be growing on the said demised lands in the last year of the said term; and to fodder his and their cattle in the said barn yards, and water them at the usual watering places there.

And also that he the said C. D., his executors, For quiet administrators, and assigns, paying the several yearly rents before reserved, and observing, performing, fulfilling, and keeping all and every the covenants, grants, provisoes, payments, and agreements hereinbefore contained, which on his and their parts and behalfs are, or ought to be performed, observed, fulfilled, and kept, shall or may, peaceably and quietly hold, use, occupy, possess, and enjoy the before demised premises, with the appurtenances, except as before excepted, for and during the said term of seven years, without any lawful let, suit, trouble, claim, eviction, denial, molestation, or interruption, by the said A. B., his heirs or assigns,

or any person or persons lawfully claiming, or to claim, by, from, or under him, them, or any of them. (u) In witness, &c.

Possession.

(a) If the lessee be turned out of possession of the farm by a person having a better title than the lessor, the latter under this covenant for quiet enjoyment, is bound to make satisfaction to the lessee for damage sustained by the loss of his term if the lessee pays the reuts and performs the covenants on his part.

MISCELLANEOUS FORMS.

(1.)

Indorsement on a Lease as a Confirmation of the same.

TO ALL TO WHOM THESE PRESENTS SHALL COME- Deed poll. the within named A.B. sends GREETING. [Recite the discovery of the defect in the lease, and the lessor's consent to ratify the same, (or as the case may Now these presents witness, that in Testatum. be). pursuance of the said agreement, and for the consideration(v) in the within written indenture expressed, he, the said A. B., by way of confirmation and further assurance of the within written indenture, DOTH demise and lease(w) and also ratify Demise and and confirm unto the said C. D., his executors, ad-confirmation. ministrators, and assigns, all that and those the messuages, farms, lands, &c., (as the case may be,) and every the premises comprised in the within written indenture, and thereby expressed to be demised to the said C. D., as within is mentioned, or intended so to be, with all and every the rights, members, covenants and appurtenances to the same belonging, and all the estate and interest thereby expressed, or intended to be granted thereof; and all and every covenants, provisoes, and agreements therein contained; TO HAVE AND TO HOLD the said messuages, Habendum. and all and singular other the premises hereby demised or confirmed, or intended so to be, and every part and parcel of the same, with the appurtenance, unto him the said C. D., his executors, administrators, and assigns, henceforth for and during all the residue of the term or period of twenty-one years

case words of confirmation only will be sufficient.

⁽v) If a further consideration be paid, add, "And in consideration Further of the sum of, &c., to the said A. B., in hand, paid, &c., the receipt," &c. sum.
(w) Fresh words of demise are used when any legal interest is left outstanding; but not when third parties join by way of consent, as in such

in the within written indenture mentioned, which is now to come and unexpired by effluxion and computation of time, as beneficially to all intents and purposes as if the said within written indenture, and the demise or lease therein expressed, or intended to be made, had been good, valid, and effectual, to all and every the intents and purposes therein mentioned, but not further or otherwise. (x)ness, &c.

(2.)

Lease for a further Term by Indorsement on the original Lease.

Parties.

Testatum.

Parcels.

Term.

Covenants.

Subject to

This indenture made the ——day of,&c., BETWEEN the within named A.B., (lessor,) of the one part, and the within named C. D., (lessee,) of the other part, witnesseth, that for and in consideration of the rent hereby reserved, and of the covenants, conditions, and agreements respectively, hereinafter contained, which on the part and behalf of him the said (lessee). his executors, administrators, and assigns, are to be paid, done, and performed, he the said (lessor), DOTH hereby demise, lease, set, and to farm let, UNTO the said (lessee), his executors, administrators, and assigns, ALL that, &c., and all and singular other the premises respectively comprised in the within written indenture of lease, and thereby de-Habendum, mised in the manner therein mentioned, TO HAVE AND TO HOLD the said, &c., and all and singular other the premises hereby demised, leased, set, and to farm let, or mentioned, or intended so to be, except as within mentioned, unto the said (lessee), his executors, administrators, and assigns, from the - day of —— next, (being the time when the said within written indenture of lease will expire,) for and during, and unto the full end and term of fourteen years longer, thenceforth next ensuing, and fully to be completed and ended; subject to, and

(x) If any further covenants are required than those contained in the original lease, they may be added here.

under the like rent, and payable in like manner, as the like rent is within mentioned, for and in respect of the rent reserved in and by the said within written indenture of lease; and subject to the like power of entry, as well on non-payment of rent, as on the happening of any of the other matters or things mentioned in the within written proviso or condition of re-entry. AND Declaration it is hereby declared and agreed, by and between as to the covenants. the parties to these presents, that they and their respective heirs, executors, administrators, and assigns, shall and will, by these presents, during the continuance of the additional term of fourteen years hereby granted, stand and be bound for and in respect of the said hereby demised premises, with the appurtenances, in such and the like covenants, (y) conditions, and agreements respectively, as they the said parties, and their respective heirs. executors, administrators, and assigns, do now stand bound in and by the said within indenture of lease, for and during the now residue unexpired of the within mentioned term hereby granted, it being the intent and meaning hereof, that this present indorsed lease, and the additional term hereby granted, shall be upon such and the like footing, and that all the covenants, clauses, conditions, and agreements respectively therein contained, shall be equally available, take place, and have the like force and effect, to all intents and purposes whatsoever, as if every article, clause, matter, and thing contained in the said within written indenture of lease were word for word repeated, and again inserted in these presents. In witness, &c.

(y) When the provisions regulating the mode of husbandry are volu- As to in-minous, this plan has been recommended on the score of economy, and will dorsement be as effectual as a separate lease, on being stamped with a lease stamp. on lease for If made by a separate deed, referring to the covenants of the original a further lease after the operative part, say, "Subject to the same rent, and upon term. such and the same covenants, conditions, powers, provisoes, declarations, and agreement as a recovered contribute and declared or and agreements, as are expressed, reserved, contained, and declared, or referred to, in and by a certain indenture of lease bearing date the ——day of ——, and made between the said A. B., of the one part, and the said C. D., of the other part." (If the rent be increased or lessened in amount, a fresh reddendum may be added as to the rent, and this may follow the declaration between the parties that the same shall be held by the lesses upon such and the same covenants, &c.; and then add the covenant, No. 15, in p. 294, with the exception as to the yearly rent or

 $x \times 2$

not, as the case may require.)

(3.)

A short Form of Lease of a House, containing the common and usual Covenants.(z)

Date. Parties.

THIS indenture, made the ——day of,&c., between A.B., of, &c., for himself, his heirs and assigns, of the one part, and C.D., of, &c., for himself, his heirs, exe-

Witnessing clause.

cutors, administrators, and assigns, of the other part; WITNESSETH, that in consideration of the rent(a) hereinafter reserved, the said A.B. doth by these pre-

Premises.

sents demise(b) and lease unto the said C. D., (c) ALL that messuage, &c., together with all out-buildings,

General words.

areas, courts, pumps, cisterns, pipes, sewers, ways, lights, easements, fixtures, and appurtenances, to to the said messuage belonging, or in anywise

Habendum. appertaining; TO HAVE AND TO HOLD the said messuage and premises hereby demised, with the appurtenances, unto the said C.D., for the term of twenty-one years, from the twenty-ninth of September next, (d) at the rent of £——, payable half yearly, (or quarterly,)(e) without any deduction

For payment of rent

whatsoever, (except for land-tax). And the said C. D. doth hereby agree with the said A. B., that he, the said C. D., will pay (f) unto the said A. B.

Covenants.

(z) In this precedent all useless words are omitted, and the usual covenants inserted. (What are usual covenants, see Van v. Corpe, 3 MyL & Keen, 282.)

(a) The words "in consideration of the rent," are sufficient without adding "and of the covenants," &c. (In fact, the reservation of a rent will be effectual to raise even a use, without a money consideration.—Cro. Eliz. 595, 2 Mod. 249.

Demise.

(b) The word "demise" is the only word necessary, and is, indeed, the appropriate word in leases which are taken for occupation.

Copyhold.

(c) If copyhold, and a license has been obtained, say, "By virtue of a license or authority for that purpose obtained from the lord of the manor

Rent.

Payments.

of which the said copyhold premises are part and parcel."

(d) The word "rent" means the yearly sum payable.

(e) It is unnecessary to specify the other half-yearly or quarterly days as they are well known, and the first payment must be made on the first quarter or half-yearly day.

Covenants.

(f) The usual covenants which can be insisted upon being introduced into the lease, in the absence of any express agreement to the contrary, are the following:-

Rent.

Firstly. The above covenant by the lessee for payment of the rent and

taxes (except land tax).

Observations.

[The use of this covenant is, that if the tenant should assign the premises to another, who might prove unable to pay the rent, and there be no sufficient distress, the landlord may recover his rent by action at law against the lessee, or his representatives, under this express covenant. And as to the taxes, the goods of the in-coming tenant would be liable for

the said rent half yearly, (or quarterly,) without any deduction whatsoever; and also discharge all And taxes. rates and taxes which may be assessed on the said premises during the said term, (except the landtax). And Also that he the said C. D., shall and To repair. will well and effectually repair (g) and cleanse the said premises, when and where necessary, and keep the same in good and tenantable repair at all times during the said term, accidents by fire only excepted); and also shall and will paint the outside To paint. wood and iron works of the said premises, twice in good oil colour, once in every three years, and paint, paper, and whitewash the inside parts thereof, which are now painted, papered, and white-washed, with good materials, once in every seven years during the said term; and the said premises, so repaired, cleansed, and painted, shall and will surrender and yield up to the said A.B., at the end or other sooner expiration of the said term. (h) And it is hereby Forlanddeclared and agreed, that it shall be lawful for the said A. B., alone, or with others, to enter and view the condition of the said premises, when he shall think proper, and of any want of reparation which he shall perceive, to give or leave notice with the said C. D.; which want of reparation the said C.D. doth hereby agree to repair within two months after the giving or leaving such notice, pursuant to

such part growing due before his time, and which he would, of course, look to the landlord to pay. The land tax should be excepted, unless the tenant is to pay it; for if he agrees to pay all taxes, he will be bound to pay the land tax, although not specifically mentioned.—See notes to p. 54.]

(g) Secondly. The above covenant by lessee to keep the premises in Repairs.

tenantable repair, accidents by fire excepted.

[In this covenant, if the tenant undertakes to repair generally, without the exception as to accidents by fire, he will be bound to re-build the premises, if they should happen to be burned down; and in case the same should be destroyed by any accident, he would have to re-build.—See notes to p. 56. As to what is tenantable repair.—See notes to pp. 70 and 71 and see p. 199.] 71; and see p. 129.]

(h) Thirdly. A stipulation that the lessee will quietly yield up the pre- To yield up.

mises at the end of the term in such repair.

[This is a common and usual covenant, the object of which is to render Observa-the tenant liable to damages, if he persist in holding over after the ex-tions. piration of the term. In the absence of this covenant the landlord could not recover damages for the retention, unless notice had been previously given to the tenant to quit according to the statutes 4 G. 2nd, c. 28, and 1 G. IV., c. 87.]

his said covenant; (i) PROVIDED ALWAYS, and it is hereby expressly declared and agreed, that if the said rent shall remain unpaid for twenty-one days after either of the said half yearly (quarterly) days of payment; or if the said C. D. shall neglect to perform his said covenants, or either of them, it shall be lawful for the said A. B. into the said premises to re-enter, and the same to repossess and enjoy as in his former estate and condition.(j) the said A. B. doth hereby agree with the said C.D., that he, paying the said rent, and performing his said covenants, shall and may peaceably and quietly hold and enjoy the said premises, without any interruption, claim, or demand whatsoever, by the said A. B., or any person claiming under him.(k) And also that if the said premises shall at any time during the said term be damaged or destroyed by fire, he the said A. B. shall and will rebuild or repair the same; and it is hereby declared, that during such case of fire. term as the said premises shall be rendered unfit for habitation by any accident by fire, the said rent

For peaceable enjoyment.

As to rebuilding in case of fire.

Suspension of rent in

For lessor to enter. ()bservations.

tions.

Proviso. Observa-

(i) Fourthly. A declaration that the lessor may enter and view the state of repairs; any want of which the lessee will amend on notice.

[This covenant is rendered necessary to prevent the lessor being deceased a trespasser in entering for the purpose of viewing the condition of the premises leased.]

(j) Fifthly. A proviso for re-entry for non-payment of the rent, or non-performance of the covenants.

[This proviso is usual and proper; and by giving the landlord a right of entry, without adding that the lease shall be absolutely void, will, if the breach of the proviso be committed, enable the landlord to waive the same if he thinks proper, but which could not be done if the lease was in such case declared to become void.—See I Saund. 287, n. 16.]

(k) Sixthly. A qualified covenant by the lessor for the lessee's quiet

Quiet enjoyment enjoyment.

This covenant is generally so qualified; but it is apprehended that, if the lessee has not had an opportunity of inspecting the lessor's title, he may demand a general covenant against interruption; but this has been doubted, for the lessee, in general, has a right to apprise himself of the soundness of the lessor's title.—Fildes v. Hooker, 2 Mer. 424.

Covenants.

The above six covenants are considered as the common and indisputable proper covenants; but the following covenant in the text by the tenant to re-build the premises if they are destroyed by fire, and a corresponding declaration that the rent shall be suspended during the time the premises are rendered uninhabitable, appears to be a proper covenant, when it is considered that the tenant is bound to pay the rent under his covenant, whether he has a house to reside in or not; and moreover, that unless the lessor covenants to rebuild, he is not bound to reinstate the premises during the term, although he may maintain actions for the recovery of the rent, and although the premises are burned down or destroyed.—1 T. R. 310, 710. 6 T. R. 488; and see note (s) to p. 41; and also note (j) to p. 56; and see precedent, p. 114.]

hereby reserved, or a proportionate part thereof, shall be suspended for such time, and in such proportions as two indifferent persons, or their umpire, shall adjudge in the usual way of arbitration. And As to deterit is hereby lastly declared and agreed, that if at the lease at any end of the first seven or fourteen years of the said period of term. term, the said C. D. shall be desirous of determining this tenancy, and of such his desire shall give or leave six calendar months' notice in writing, to or with the said A. B., at his last or most usual place of abode in England; then, on the expiration of the said first seven or fourteen years of the said term, as the case may be, and payment of the said rent, and performance of the said covenants, this present lease, and every clause and thing herein contained, shall cease and be void. In witness, &c.

(4.)

Lease of a Shop and Warehouse, (Part of a Dwelling-house and Premises).(l)

THIS indenture, made this —— day of, &c., BE- Parties. TWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part, WITNESSETH, that for and in Witnesseth. consideration of the rent and covenants hereinafter reserved and contained, which on the part and behalf of the said C. D., his executors, administrators, and assigns, are to be paid and performed, he the said A.B. DOTH hereby demise and let unto the said C.D., Demise. his executors, administrators, and assigns, ALL that (m)shop or lower room, situate, lying, and being in, &c., with the warehouse adjoining to the messuage and premises, of which the premises hereby demised are part and parcel, late in the tenure of, &c., but now in the tenure or possession of him the said A. B., or his assigns; TO HAVE AND TO HOLD the said Habendum.

(1) This form may be applied to any small tenement, or part of a house, Form. to which may be added any requisite covenant contained in the preceding

⁽m) If other part of a house, describe the rooms, as, "All that dining Where part room and bed room, &c., being part of a messuage, &c., situate, &c., and of a house. all ways, passages, lights, easements, privileges, and appurtenances, to the same belonging."

shop, or lower room and warehouse, unto the said

C. D., his executors, administrators, and assigns, from, and, &c., last past, for and during the term of seven years from thence next ensuing, Reddendum and fully to be complete and ended; (n) yielding and paying therefore, yearly and every year during the said term hereby granted unto the said C. D., his executors, administrators, and assigns, (o) the yearly rent or sum of, &c., to be paid by equal quar-

Covenant of reut

Proviso in case rent shall be bebind.

terly payments, being the days following the ---- day of, &c., in every year, the first quarterly payment thereof to begin and be made on the — — day of - next ensuing the date of these premises. And for payment the said A. B., for himself, his executors, administrators and assigns, doth covenant and grant to and with the said C. D., his, &c., by these presents, that he the said C.D., his executors, administrators, or assigns, shall and will well and truly pay, or cause to be paid, unto the said A. B., his, &c., the said yearly rent or sum of, &c., on the respective days of payment hereinbefore mentioned.(p) Provided always, and it is hereby declared, that if it shall happen the said yearly rent or sum of, &c., or any part therof, shall be behind and unpaid, in part or in all, by the space of fifteen days next after any or either of the said days of payment on which the same ought to be paid as aforesaid, being lawfully demanded; that then and from thenceforth it shall and may be lawful, to and for the said A. B., his executors, administrators, or assigns, into the said shop or lower room to re-en-

Proviso.

(n) If a proviso is intended to be inserted for determining the lease at the end of a certain period, add here, "Determinable, nevertheless, as hereinafter mentioned."

Re dendum

(o) If the lessor has the freehold, the reservation and covenants must

Gunpowder

be to him, his heirs and assigns.—See p. 485.

(p) A covenant may be added here for lessee not to use or permit offensive trades, see p. 494, and then may follow in addition, "Nor shall be added here for lessee not to use or permit offensive trades, see p. 494, and then may follow in addition, "Nor shall be added here for lessee not to use or permit of the said and t nor will bring, or permit to be brought to or lodged in or upon the said demised premises, or any part thereof, any hemp, flax, tallow, oil, pitch, tar, turpentine, gunpowder, or any other goods of a sort or quality which may in any way affect or invalidate any insurance or insurances from fire, made, or hereafter to be made, by the said (lessor), his heirs, executors, administrators, or assigns, in, of, or upon, the said dwelling-house, or in of or upon, any goods or memberdies in the next thereof by him or in, of, or upon, any goods or merchandise, in the part thereof by him occupied."

ter, and the same to have again, repossess, and enjoy, as in his and their first and former estate or estates, any thing herein contained to the contrary notwithstanding. And the said A. B., for himself, Covenant for quiet enhis executors, administrators, and assigns, doth cove- joyment. nant and grant to and with the said C.D., his executors, administrators, and assigns, that under the rents and covenants herein contained, the said C. D. shall and may peaceably and quietly have, hold, use, occupy, possess, and enjoy, the said shop or lower room, and warehouse, hereby demised, during the said term hereby granted, without any molestation, disturbance, or denial of him the said A. B., his executors, administrators, or assigns, or any other person or persons whatsoever claiming, or to claim, by, from, or under him, them, or any of them, freed, discharged, and acquitted, of and from the payment of land-tax, and all other taxes, assessments, (and payments for water,) or otherwise whatsoever, now paid, or to become payable in respect of the premises hereby demised; and which said taxes, assessments, and payments, the said A. B. doth hereby for himself, his executors, administrators, and assigns, covenant with and to the said C. D., to pay and satisfy.(q) In witness, &c.

(q) Here may be added for greater security, "And also indemnify the said (lessee), his executors, administrators, and assigns, of and from the payment of all, and every, or any, sum or sums of money in respect thereof; and also of and from all costs, charges, expenses, claims, and demands, which he, the said (lessee), his executors, administrators, or assigns, shall bear, pay, or sustain, for, or by reason, or on account of, his or their being liable to serve parish offices." A proviso for re-entry may follow as in p. 521; and a proviso for determining the lease at the end of a certain term, see p. 522; and if at the end of any one year of the term, the proviso will be thus: "Provided, &c., that it shall be lawful for the said (lessor), his heirs or assigns, to determine, &c., this present demise, and the term hereby granted, in respect of the said shop, &c., at the end of the first or any succeeding year of the said term, upon delivering to the said (lessee), his, &c., six calendar months' previous notice," &c. (This proviso may be at the option of the lessee, or lessor, or of both.—See p. 501.)

. (5.)

Lease of a water corn Milland Premises, by Husband and Wife, under a general Power of Appointment given to them by Deed, to be exercised jointly over the Hereditaments.

Parties.

power.

Witnessing

Exercise of

Premises.

General words

This indenture, made the —— day of, &c., between A. B., of, &c., and E., his wife, of the one part, and C.D., of, &c., of the other part; WITNES-SETH, that for and in consideration of the yearly rent, and of the covenants hereinafter reserved and contained, and which on the part and behalf of the said C. D., his executors, administrators, and assigns, are to be paid, observed, and performed, he the said A. B., and E. his wife, by virtue and in exercise of the power of appointment reserved to them jointly, by a certain indenture dated the day of —, 1837, no by these presents demise, lease, set, and farm let unto the said C. D., his executors, administrators, and assigns, ALL that water corn mill, called or known by the name of, &c., situate, &c., and the ground whereupon the said mill stands, containing, &c., (be the same more or less); and also all and all manner of toll, custom and benefit for grinding of corn and grain whatsoever; and all and singular wears, ponds, pools, dams, sluices, stanks, banks, streams, water, watercourses, fishings, fishing places, ways, paths, passages, easements, profits, commodities, advantages, emoluments, hereditaments, and appurtenances whatsoever, to the said mill, and other the premises by these presents demised and leased, or any of them, or to any part or parcel thereof, incident thereto, and belonging or appertaining to the same. Habendum. To have and to hold the said water corn mill, and all and singular other the hereditaments and premises hereby demised, with the appurtenances, unto the said C. D., his executors, administrators, and

assigns, from the —— day of, &c., for and during the term of twenty-one years thence next ensuing,

Reservation and fully to be complete and ended. Yielding and

paying therefore yearly and every year during the of rent. said term, unto the said A. B., and E. his wife, their heirs, appointees, or assigns, the net yearly rent of £—, by half yearly payments, in and upon, &c.; the first payment thereof to begin and be made on the —— day of —— next ensuing. And the said C. D., for himself, his executors, covenant administrators and assigns, doth covenant and grant of rent. to and with the said A. B., and E. his wife, their heirs, appointees, and assigns, that he the said C. D., his executors, administrators, or assigns, shall and will well and truly pay, or cause to be paid, unto the said A. B., and E. his wife, their heirs, appointees, or assigns, the said yearly rent so reserved as aforesaid, at the days and times, and in manner and form hereinbefore expressed, according to the true intent and meaning of these presents. Provided Proviso in always, and it is hereby declared, that if it shall payment of happen that the said yearly rent-above reserved, or rent. any part thereof, shall be behind and unpaid, in part or in the whole, by the space of twenty-one days next after any or either of the said days appointed for payment thereof, that then, and from thenceforth, it shall and may be lawful to and for the said A. B., and E. his wife, their heirs, appointees, and assigns, into the said mill and premises, or any part thereof, in the name of the whole to re-enter, and the same to have again, repossess and enjoy, as in his and their former estate or estates, any thing herein contained to the contrary notwithstanding. And the For peacesaid A. B., for himself, his heirs and assigns, (r) able occupadoth covenant and grant to and with the said C.D., his executors, administrators, and assigns, that he the said C. D., his executors, administrators, and assigns, shall and may, by and under the yearly rent and covenants hereinbefore reserved and contained, peaceably and quietly have, hold, occupy, possess, and enjoy, all and singular the said mill and premises, with the appurtenances, for and during the said term hereby granted, without any the let, suit,

(r) This covenant should be entered into by the husband only.

trouble hinderance, molestation, interruption, or denial of him the said A. B., and E. his wife, their heirs, appointees, or assigns, or of any other person or persons whomsoever, claiming or to claim, by, from, or under him or them. In witness, &c.

A concise Form of Lease of a House for twenty-one Years, without Restriction as to Assignment, with a Covenant for granting a further Term at the Expiration of the Lease, upon six Months' prior Notice, and with a Proviso for making void the Lease in Case of the Death of the Lessee.

Parties.

Tostatum.

Operative part.

Parcels.

General words.

This indenture, made the —— day of, &c., bebetween A. B., of, &c., (lessor), of the one part, and C. D., of, &c., (lessee), of the other part, wir-NESSETH, that for and in consideration of the yearly rent, and the covenants, provisoes, and agreements hereinafter reserved and contained, by and on the part, and on behalf of the said (lessee), his executors, administrators, and assigns, to be paid, kept, observed, and performed, he the said (lessor), doth by these presents demise and lease, unto the said (lessee), his executors, administrators, and assigns, all that messuage and dwelling-house, situated and being in, &c., together with all ways, paths, passages, vaults, cellars, watercourses, and other conveniences, to the said premises, hereby demised, belonging, or in anywise appertaining, or reputed, Habendum. or known to be part thereof; TO HAVE AND TO HOLD the said messuage and premises, with their appurtenances, unto the said (lessee), his executors, administrators, and assigns, from the --- day of - now last past, for and during the term of twenty-one years thence next ensuing, and fully to be completed and ended, (determinable nevertheless at the expiration of the first seven or fourteen years thereof, upon such conditions as are hereinafter mentioned), he the said (lessee), his executors, administrators, and assigns, paying yearly,

Rent to be paid.

and every year(s) during the said term, unto the said (lessor), his executors, administrators, and assigns, (t) the yearly rent or sum of —, of lawful money of Great Britain, by equal quarterly payments, on the respective days following, (that is to say,) on the Times of 25th day of March, the 24th day of June, the 29th payment. day of September, and the 25th day of December, in every year, (save and except at all times during Exception the said term, such proportional part of the said in case of yearly rent of, &c., as shall or may grow due during such time as the messuage or tenement hereby demised shall, without the hindrance of the said (lessee), his executors, administrators, and assigns, be and remain uninhabitable, by reason of accidental fire),(u) and to be clear of all and all manner of parliamentary, parochial, and other taxes, assessments, rates, and deductions whatsoever, (the land tax and sewers' rate excepted),(v) the first quarterly payment thereof to commence First quarand be made on the —— day of —— next ensuing terly paythe date of these presents; and the said (lessee) covenant doth hereby for himself, his executors, &c., cove- for payment nant, promise, and agree, to and with the said (lessor), his executors, &c., that he, the said (lessee), his executors, &c., shall and will, at his and their own proper cost, cause to be well and sufficiently painted, all the outside wood(w) and iron To paint work belonging to the said messuage and premises wood, &c. hereby demised, every third year during the conti-

(s) The words "yielding" and "paying" (formal terms usually employed Reddendum in framing the reddendum in a lease) are not essentially necessary, for any expression declaratory of the intention of the parties that a rent shall be payable, will be a sufficient reservation.—See Orby v. Mohun, 2 Vern. 531—542. S. C. 2 Freem. 291.

(1) If the lessor is seized in the fee say, "his heirs and assigns," and the Representacovenants on his part accordingly. [The representative characters will tive characbe according to the estate or interest of the lessor; and if any doubt ters.
exists, the reservation may be in general terms—See p. 485.]

(a) This exception is sufficient to exonerate the lessee; but to prevent Exception.

disputes as to the abatement to be made, and as to the time of re-building, when the lessee is to re-build, an express provise is sometimes inserted providing for a reference, or other mode for settling any question arising between the lessor and lessee.—For this provise, see p. 498, and

notes (r) and (s).

(v) This exception is requisite, as an agreement to pay all taxes extends Taxes.

to the land tax.—1 Ryan and Moody, 254.

(w) See covenant, p. 290, No. 10; and for shorter form, see No. 3, p. 521. Covenant.

And keep premises in repair.

nuance of the said term; and at his and their like proper cost and charges shall and will, at all times during the continuance of the said term, keep in a good, sufficient, and tenantable state of repair, as well all and singular the glass and other windows, wainscots, rooms, floors, partitions, ceilings, tilings, walls, rails, fences, pavements, grates, sinks, privies, drains, wells, and water-courses; as also all and every other the parts and appurtenances of the said messuage and premises hereby demised, (damage happening by casual fire only excepted).(x) AND FURTHER, that it shall be lawful for the said to enter and (lessor), his executors, administrators, and assigns, giving three either alone or with others, troice in every year

For lessor view on days' notice.

during the said term hereby granted, at such times of the year as to him or them shall seem meet, to enter, and at seasonable times of the day, into and upon the said messuage or tenement, and premises hereby demised, and every part thereof, and there to view and examine the state and condition thereof, notice(y) of such intention to view being at all times previously given unto the said (lessee), his executors, administrators, and assigns, three days at least before the same shall take place; and in case any decay or want of reparation be found on such view, the said (lessee), for himself and executors, &c., doth hereby covenant and

agree, to and with the said (lessor), his executors, &c., to cause the same to be well and sufficiently

And in case of decay lessee covenants to repair.

repaired and amended, within the space of six months after notice thereof in writing shall have been given And to yield to him or them for that purpose. (z)AND the said (lessee), doth hereby for himself, his executors, &c., up in such repair. covenant, promise, and agree, to and with the said (lessor), his executors, &c., that he, the said (lessee), his executors, administrators, and assigns, at the end or earlier determination hereby granted,

Exception.

(y) See covenants, p. 290.

⁽x) This exception is intended to prevent the lessee from becoming liable to re-build in case of fire.—See p. 498.

⁽²⁾ See covenants, pp. 290, 291, where the repairs are to be done under the inspection of lessor's surveyor. Repairs.

shall and will leave and yield up unto the said (lessor), his executors, administrators, and assigns, all and singular the said messuage and premises, with their appurtenances, in such good, sufficient, and tenantable state of repair as aforesaid, together with all and every the doors, locks, keys, bolts, bars, chimney-pieces, dressers, shelves, water-pipes, and other things, mentioned in an inventory or schedule hereunder written or hereunto annexed, in as good plight and condition as the same now are, reasonable use and wear thereof, and casualties happening by fire, only excepted.(a) PROVIDED always, that if Provise for the said yearly rent hereby reserved, or any part re-entry in thereof, shall be in arrear and unpaid for the space in arrear be unpaid. of thirty days next after any of the days whereon the same is hereinbefore covenanted to be paid as aforesaid; (it being first lawfully demanded;)(b) or if the said (lessee), his executors, administrators, and assigns, shall not well and truly observe and keep (according to the true intent and meaning of these presents) all and every the covenants, clauses, provisoes, and agreements, to be by him and them observed and kept; THEN and from thenceforth it shall be lawful for the said (lessor), his executors, administrators, and assigns, to re-enter upon the said demised messuage and premises, and the same to have again, repossess and enjoy, as his and their first and former estate; and that from and after such re-entry made, this lease and every clause herein contained, shall be utterly void to all intents and purposes. And (c) the said (lessor), for himself, For peace. his executors, administrators, and assigns, doth able occupacovenant, promise, and agree, to and with the said (lessee), his executors, &c., that he the said (lessee), his executors, administrators, or assigns, paying the rent hereby reserved, in manner aforesaid, and

strictness of the common law. (c) This covenant will be implied in all leases, and may, in general, be Implied omitted.—See 1 Barn, & Cress, 457. See note (k) to p. 522. covenant

⁽a) For a covenant to insure against fire, see pp. 291, 491.
(b) ()r say, "Being first lawfully demanded upon," or at any time after, Demand of the said twenty-one days, and not paid when demanded." See p. 497 rent. and notes as to dispensing with a demand of payment according to the

performing the covenants and agreements herein contained, shall, and lawfully may, peaceably and quietly, use, possess, and enjoy the messuage and premises hereby demised, for and during the said term of twenty-one years hereby granted, without any action, let, or interruption whatsoever of the said (lessor), his executors, administrators, or assigns, or any person or persons lawfully claiming.

lessor for fresh lease.

Covenant by or to claim by, from, or under him or them. AND(d) executing a the said (lessor) doth hereby further covenant, promise, and agree, to and with the said (lessee), his executors, administrators, and assigns, that the said (lessor), his executors, administrators, and assigns, shall and will before the expiration of this present lease, on the request and at the cost and charges of the said (lessee), his executors administrators, or assigns, grant and execute unto him and them a new and fresh lease of the messuage or tenement, and all other the premises hereby demised, with their appurtenances, for the further term of twenty-one years, to commence from the expiration of the term hereby granted; the same to be at the same yearly rent, payable in like manner, and under and subject to the like covenants, provisoes, and agreements, (except a covenant for the renewal thereof, at the end of such further term,)(e) as are contained in

Covenant for new lease.

(d) Or thus: "And the said (lessor) doth hereby for himself, his heirs and assigns, further covenant, promise, and agree, to and with the said (lessee), his executors, administrators, and assigns, that in case the said (lessee), his executors, administrators, and assigns, shall be desirous of taking a new lease of the said premises hereby demised, after the expiration of the said term hereby granted, and shall, at least six calendar months before the expiration thereof, signify such his or their desire by a notice in writing to be delivered to the said (lesses) his being or accions notice in writing to be delivered to the said (lessor), bis heirs or assigns, or left at his or their usual place or places of abode, he, the said (lessor), his heirs or assigns, shall and will at or before the expiration of the said term, at the costs and charges of the said (lessee), his executors, administrators, or assigns, and on payment of the sum of, &c., by way of premium or fine for such renewal, forthwith make and execute unto him and them a new and fresh lease of all and singular the premises hereinbefore demised, for a similar term of twenty-one years, to commence from and after the expiration of the present term hereby granted, at and under the like rent, and with and subject to the like covenants, provisoes, and agreements, as are herein contained, excepting only this present covenant or agreement for renewal." When the covenant is meant to extend to perpetual renewal, then, instead of the words in italics, the following words are used: "Including this present covenant or agreement for renewal."—See notes to renewed lease for lives.

Renewal

(c) A covenant in a lease to grant a further term at the same rent, and

these presents; such new lease, however, to be granted, and to be valid only on condition that the said (lessee), his executors, &c., do execute a counterpart thereof, and also pay unto the said (lessor), his executors, administrators, and assigns, the sum of £---, of lawful money, &c., at the time of executing the said lease, as and by way of premium for the renewal thereof; AND also that if the said (les- As to quitsee), his executors, &c., shall be desirous to quit ting before expiration the said messuage or tenement, and premises hereby of term. demised, at the expiration of the first seven or first fourteen years of the term of twenty-one years hereby granted, and of such his or their desire, shall give notice in writing to the said (lessor), his executors, &c., six calendar months before the expiration of the said first seven or fourteen years, (as the case may be); then and in such case, (all arrears of rent being duly paid, and the said messuage or tenement, and all other the premises hereby demised, being in such repair as they are hereinbefore covenanted to be maintained and left in,) this lease, and every clause and thing herein contained, shall, at the expiration of such first seven or fourteen years of the said term of twenty-one years hereby granted, (whichever shall be in the said notice expressed,) determine and be utterly void, to all intents and purposes, in like manner as if the whole term of twentyone years had been run out and expired; anything in these presents contained to the contrary thereof notwithstanding. Provided Also, and these pre- Proviso for sents are upon this express condition, nevertheless, determining lease on the that if the said (lessee) shall happen to depart this representalife at any time during the term hereby demised, tives of les-

under and subject to the same covenants, as in the original lease, is now of lease. held to be a covenant for a single renewal, and that it does not entitle the lessee to have a covenant for renewal inserted in the new lesse.—
Iggulden v. May, 9 Ves. 325. 7 East, 237. S. C. New Rep. 449. 9 Ves.
315; see also Moore v. Foley, 6 Ves. 232. Douling v. Mill, 1 Madd. 541.
The construction of the court is against the lessee in general; and therefore, in order to establish the construction, care should be taken that the intention for renewal, whether perpetual or otherwise, be unequivocally expressed.—Baynham v. Guy's Hospital, 3 Ves. 298; and see Russell v. Darwin, 2 B. C. & C. 639, n. Trittan v. Foote, Ib. 636; and see also Hyde v. Skinner, 2 P. W. 196.

YY3

dar months notice.

three calen- and the executors, administrators, or assigns of the said (lessee) shall at any time after the expiration of the first three calendar months next after such his decease, be minded and desirous to quit and leave the said demised premises, and of such their mind or intention shall on any quarter day after the expiration of the said three calendar months, give or leave six calendarmonths' notice or warning in writing, to or for the said (lessor), his executors, administrators, or assigns, at his or their then place or places of abode, he the said (lessee), his executors, administrators, or assigns, having first paid the rent and performed all and singular the covenants, provisces, and agreements herein contained, on his and their parts to be done and performed; then and in such case at the expiration of the said six months, such notice having been first given as aforesaid, these presents and the term hereby granted shall cease, determine, and be utterly void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. In witness, &c.

(7.)

Lease of a Public-house from Husband and Wife, in which a Surety joins with the Lessee for Payment of Rent, &c.

Parties.

This indenture made the —— day of, &c., 1838, BETWEEN A.B., of, &c., (lessor), gentleman, and M., his wife, (f) of the one part, C.D., of, &c., (lessee), of the second part, and E. F., of, &c., (surety), of the third part, WITNESSETH, that the said A. B., in consideration of the rent, covenants, and agreements hereinafter reserved and contained on the part and behalf of the said C. D., his executors, administrators, and assigns, to be paid, done, and performed,

Testatum.

Wife a party

(f) The wife must be a party to the lease, which must be by indenture, in the name of the husband and wife, and the deed must be scaled by her, and the rent reserved to the husband and wife, and the heirs of the wife.

—See stat. 32 Hen. VIII., c. 28, s. 3. (The act only extends to cases in which the inheritance is in the wife solely; and therefore, where she is seized of the inheritance jointly with her husband, she need not be a party.

—See Butl. Co. Litt. 44, a. n.

they the said A. B., and M., his wife, no by these Operative presents demise and lease unto the said C. D., ALL Premises. that messuage or tenement, with the appurtenances thereto belonging, situate and being in the parish or, &c., aforesaid, wherein the said C. D. now dwells, and commonly called or known by the name or sign of the Green Dragon, with the yards, garden, and ground adjoining to the same; AND all cellars, sollars, lights, easements, ways, waters, water courses,(g) profits, advantages, and emoluments whatsoever, to the same belonging, or in anywise appertaining. To HAVE AND TO HOLD the said mes. Habendum. suage or tenement, yard, garden, and ground, and all and singular the other premises, with the appurtenances hereby demised, or intended so to be, unto the said C. D., his executors, administrators, and assigns, from the —— day of, &c., for and during, and unto the full end and term of twenty years from thence next ensuing, and fully to be complete and ended; he the said C.D. paying(h) there-Rent. fore, yearly and every year during the said term, unto the said A. B., and M., his wife, and the heirs and assigns of the said M., the net rent(i) or sum of —, of lawful money of Great Britain, at or upon the following days or times of the year, (that is to say,) the,&c., the,&c., the &c., by even and equal portions. The first payment thereof to be made on the ——day of, &c., now next ensuing. And the said C. D., and Covenant by also the said E. F., at the instance and request, and lessee and his surety as the surety for the said C. D., do hereby jointly for payment for themselves, their heirs, executors, and adminis- of rent. trators, and each of them, doth hereby for himself, his heirs, executors, administrators, and assigns, covenant to and with the said A. B., and M., his wife, and the heirs and assigns of the said M.,

(i) A net rent is a sum to be paid to the landlord clear of all deductions. Net rent.
-Bennett v. Womack, 7 Barn. & Cress. 627. 1 Man. & Ryl. 644.

⁽g) An exception may be added here if required: "Except and reserved Exception to the said A. B., and M. his wife, and her heirs and assigns, the free of free runrunning of water and soil coming from any other buildings and lands con-ning of tiguous to the said premises, in and through the water courses made, or water. to be made, upon or under the said premises."

(h) Or say, "Yielding and paying."

And to re-

pair.

And to cleanse wydraughts, &c.

up with fixtures and

by these presents in manner following, that is to say, THAT he the said C. D., his executors, administrators and assigns, or some one of them, shall and will from time to time, and at all times during the said term, well and truly pay, or cause to be paid, to the said A. B., and M., his wife, and the heirs and assigns of the said M., the said yearly rent of £50 hereby reserved, at the days and times hereinbefore appointed for payment thereof, and according to the true intent and meaning of these presents. And also shall and will from time to time, and at all times during the said term hereby granted, when and as often as occasion shall be and require, at his and their own costs and charges, well and sufficiently repair, support, and uphold, sustain, amend, maintain, and keep in repair the said messuage or tenement, and premises hereby demised, in, by, and with, and all manner of needful and necessary reparation and amendments whatsoever. And also the wydraughts and privies to the said messuage or tenement, and premises belonging, and pavements, and water-courses thereof, as well within the same as without, shall and will, at his or their, or some or one of their like costs and charges, from time to time, and at all times during the said term hereby granted, cleanse, empty, scour, pave, and amend. To yield up. And the same premises being so well and sufficiently repaired, supported, upheld and amended, cleansed, emptied, scoured, and paved in manner aforesaid, at the end of the said term hereby demised or other sooner determination thereof, shall peaceably and quietly And to yield leave, surrender, and yield up unto the said A, B., and M., his wife, and the heirs and assigns of the other things said M., together with all sheds, buildings, and erecspecified in a schedule. tions thereon; and all doors, locks, bars, wainscots, partitions, closets, shelves, pipes, and gutters of lead, glass and glazed windows, marble and other hearths, chimney pieces, tiles, and foot paces, and all other things now or hereafter to be fixed or fastened to the said demised premises, or any part thereof, together with the several other things par-

ticularized in the schedule hereunder written, safe, whole, and undefaced, (reasonable use and wear thereof, and also all such things as are fixed and used in trade excepted). And further, that it shall To enter and may be lawful, to and for the said A. B., and repairs. M., his wife, and the heirs of the said M., or any of them, with workmen, or others in his or their company, twice in every year, or oftener, at his or their will and pleasure, during the said term hereby demised, to enter into and upon the said demised premises, or any part thereof, there to view, search, and see the state and condition of the same. for every defect or default of reparation then and there found, to give or leave notice or warning in writing at the said demised premises, to or for the said C.D., his executors, administrators, or assigns, to repair and amend the same defects or defaults of reparation, within six months then next following: within which said time and space of six months, the said C. D., for himself, his executors, administrators, and assigns, doth hereby covenant, promise and agree, to and with the said A. B., and M., his wife, and the heirs and assigns of the said M., to repair and amend the same defaults of reparations accordingly. And likewise the said C. D., for him-Covenant by self, his executors, administrators, and assigns, doth assign or covenant and grant, to and with the said A. B., and underlet M., his wife, and the heirs and assigns of the said license of M., by these presents, that he the said C. D., his the lessor. executors, administrators, and assigns, or any of them, shall not nor will grant, bargain, sell, demise, lease, assign, or set over this present indenture, and premises hereby demised, or any part or parcel thereof, or underlet the same, or any part or parcel thereof, to any person or persons during the said term, without the license or consent of the said A.B., his executors, administrators, and assigns, in writing first had and obtained for that purpose. And Lesses not further, that he, the said C.D., his executors, admi-house. nistrators, or assigns, or any of them, shall not nor will at any time during the said term, divide or make

any of the timbers.

Proviso for re-entry on non-pay-ment of rent, &c.

the said messuage or tenement into any more than one dwelling-house, or alter the same in any other Nor weaken manner than it is at present. And also shall not nor will cut, take down, or weaken any of the timber, beams, joists, or rafters of the said premises, without the leave or license of the said A. B., and M., his wife, or the heirs or assigns of the said M., first had and obtained in writing for that purpose. (j) PROVIDED ALWAYS and nevertheless, and these presents are upon condition that if it shall happen that the said yearly rent of £50 hereby reserved shall be behind or unpaid, in part or in all, by the space of twenty days next over or after any or either of the said days or times of payment whereon the same ought to be paid as aforesaid, being lawfully demanded, and no sufficient distress or distresses can or may be had or found in or upon the said demised premises, or on some part thereof, whereby to levy the same, with arrears thereof, (if any,) and all costs and charges attending the same; (k) or if

verting of

Covenant to prevent conprevent convert the house into a private house, thus: "And further, that he,'the said (lessee), his executors, administrators, or assigns, shall not nor will at any time during the continuance of this house into a demise, convert the said messuage into a private house, or use the same, or suffer it to be used, for any other purpose than as an inn, tavern, or public house; and shall and will conduct and manage the same in a proper and orderly manner, so as to afford no ground or pretence for discontinuing the licenses thereof, but shall and will use his and their best endeavours at all times to increase and extend the business and custom thereof."—(See p. 296.)

landlord.

Covenant to If the landlord is a brewer, a covenant may be added for tenant to buy buy ale and beer and liquors of him, thus: "And further, that he, the said C. D., his beer from executors, administrators, and assigns, shall and will from time to time, and at all times during the first -- years of the term hereby granted, purchase, or cause to be purchased, have, receive, and take, of and from the said A. B., all such strong beer, ale, and table beer, as shall be required, bought, had, received, or taken in, retailed, vended, sold, disposed, and made use of, in, upon, or about, the aforesaid inn, and the tap-room thereof, and all other parts of the said building and premises aforesaid; and shall not purchase, vend, sell, dispose, or make use of, any other strong beer, ale, and table beer, in, upon, or about, the same premises, then such as shall be bought of the said A. B. during the term aforesaid, if the said A. B. do and shall serve and deliver such strong beer, ale, and table beer, at the same prices as to the other customers, and of the like good quality, but not longer or otherwise."—(See note to p. 296.)

(k) Here may be added, "Or if the said C. D., his executors, administration of the like good content of the said C. D., his executors, administration of the said C. D., his executors, and the said C. D., his executors, administration of the said C. D., his executors, and the

Proviso for

making trators, or assigns, shall at any time or times during the continuance of lease void in this demise, grant, bargain, sell, demise, lease, assign, set over, or undercase of bank- let, the premises hereinbefore demised to any person or persons whomso-ruptcy, &c. ever, for all or any part of the said term of twenty-one years, without the license or consent in writing of the said A. B., his heirs or assigns, in

the said C. D., his executors, administrators, or assigns, shall not well and truly observe, perform, fulfil, and keep, all and singular the covenants, conditions, articles, provisoes, and agreements in these presents expressed, on his and their parts and behalf to be done and performed, according to the true intent and meaning of these presents; then and from thenceforth, in any or either of the cases aforesaid, it shall and may be lawful, to and for the said A.B., and M., his wife, and her heirs and assigns, or any of them, into the said demised premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, retain, repossess, and enjoy, as his and their first and former estate, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. And the said A.B., for For quiet himself, and for the said M., his wife, and her heirs, enjoyment. and assigns, doth hereby covenant and promise with the said C.D., his executors, administrators, and assigns, that he, the said C.D., his executors, administrators, and assigns, paying the said yearly rent of, &c., hereby reserved, and performing the covenants and agreements herein contained, on his and their parts and behalfs to be performed and kept, according to the true intent and meaning of the same, shall and lawfully may, peaceably and quietly enter into, have, hold, occupy, possess, and enjoy, all and singular the said premises hereby demised, and every part and parcel thereof, with their and every of their appurtenances, for and during the said term hereby granted, without any let or hinderance, molestation, interruption, or denial, of or by the said A. B., and M., his wife, or the heirs or assigns of the said M., or of or by any other person or persons whomsoever, lawfully claiming, or to

writing for that purpose first had and obtained; or if the said C. D., his executors, administrators, or assigns, shall become a bankrupt or bankrupts, or take advantage, or attempt to take advantage, of the now existing or any future act or acts of parliament for the relief of insolvent debtors, or shall compound for his debts, or assign over his estate and effects for payment thereof, or any execution shall issue against his effects, whereupon the said premises, or any part thereof, shall be taken, or attempted to be taken, in execution; or," &c.—(See Provisoes.)

claim, by, from, or under him, her, or them, or any of them. In witness, &c.

(8.)

Lease of a Wife's settled Estate for Life, in pursuance of a Power reserved to her in her marriage Settlement, (the Husband joining as a consenting Party).

Parties.

Testatum.

Exercise of DOWEL.

Operative part.

Habendum.

This indenture, made the —— day of, &c., BE-TWEEN A. B., of, &c., and E., his wife, (heretofore E. B., spinster,) of the one part, and C. D., of, &c., of the other part, WITNESSETH, that for and in consideration of the rents and covenants hereinafter reserved and contained, sur the said E.B., by virtue of, and in pursuance of, a power given and reserved to her, in and by an indenture of settlement, dated on or about the —— day of ——, 1836, and of all other powers enabling her in that behalf, and by and with the privity and consent of the said A. B., testified by his being a party to, and executing these presents, DOTH hereby demise, lease, and grant; and the said A. B., (as far as he lawfully can or may,) doth demise, lease, ratify, and confirm, unto the said C. D., his executors, administrators, and assigns, ALL that capital messuage, &c., situate and adjoining the messuage and premises now in the occupation of the said A. B., and E. his wife, together with all ways, &c., TO HAVE AND TO HOLD the said capital messuage, &c., hereby demised, granted, and confirmed, or intended so to be, with their and every of their appurtenances, unto the said C. D., his executors, administrators, and assigns, from,&c., for and during the term of twentyone years from thence next ensuing, and fully to be Reddendum complete and ended; YIELDING AND PAYING therefore, yearly and every year during the said term, unto the said A. B., and E., his wife, (1) or such per-

(I) Or say, "And such person or persons who for the time being shall be successively entitled to the freehold and inheritance of the said demised premises in possession, under and by virtue of the said indenture of settlement as aforesaid," (as the case may be).

son or persons as shall be entitled to the freehold or inheritance of the premises for the time be $ing_{\cdot}(m)$ the yearly rent of £----, of lawful money of Great Britain, at, or on, the two usual days of payment in the year; that is to say, the —— day of, &c., and the —— day of, &c., by even and equal portions, the first payment thereof to be made on the - day of, &c.; AND the said C. D., for himself, Covenant for payment his heirs, executors, and administrators, doth hereby of rent. covenant and grant, to and with the said A. B., and E., his wife, her heirs and assigns, that the said C.D., his executors, administrators, and assigns, or some one of them, shall and will well and truly pay, or cause to be paid, the said yearly rent of £ —, at the times and in manner hereinbefore mentioned and appointed for payment thereof.(n) And also shall and will, from time to time, and at To repair. all times hereafter during the said term hereby demised, well and sufficiently repair, uphold, support, maintain, sustain, amend, pave, purge, scour, cleanse, empty, and, keep the said capital messuage or mansion house, and all other the premises hereby demised, with their and every of their appurtenances, and all the glass, windows, pavements, privies, sinks, gutters, and wydraughts to the same belonging, in, by, and with, all and all manner of needful and necessary reparations and amendments whatsoever, when, where, and as often as need or occasion shall be and require during the said term, (casualties by fire, wind, storms, and tempest excepted,) the said C.D., his executors, administrators, or assigns, being allowed rough timber and sufficient rafters for the reparation thereof, to be assigned for the use of him, the said C.D., his executors, administrators, or

(m) If there are divers limitations over, say, "And such other person or persons who, for the time being, shall be successively entitled to the free-hold and inheritance of the said demised premises in possession, under tations over and by virtue of the said indenture of release as aforesaid."

tations over.

⁽n) If the lessee is to pay the taxes, add, "Without any deduction what noever, (except for land tax,)" then may be added, "And also, shall and will pay [the land tax] paving rates, and composition for paving, and all other taxes, rates, duties, and assessments whatsoever, parliamentary, parochial, or otherwise, now charged, or hereafter to be charged, upon the said premises, or upon the said (lessors), &c., on account thereof."

assigns, within three months after he or they shall To yield up. demand and have occasion for the same; AND the said capital messuage or mansion house, lands, hereditaments, and premises, with the appurtenances thereto belonging, so being in and by all things well and sufficiently repaired, upheld, supported, sustained, glazed, paved, purged, scoured, cleansed, emptied, maintained, and amended, at the end or expiration of the said term of twenty-one years, shall and will peaceably and quietly leave, surrender, and yield up unto the said M. B., or such person or persons as shall be entitled to the same, for the time being, his, her, or their heirs or assigns; together with all the goods, furniture, doors, locks, keys, bolts, bars, shelves, partitions, chimneypieces, and other things now therein, (and which are more particularly mentioned in a schedule hereunto annexed,) in as good condition as the same now are or may be, (the reasonable use and wear thereof, accidents, and casualties by fire in the mean time only excepted). AND FURTHER, that it shall and may be lawful to and for the said M. B., or her assigns, or such person or persons as shall be entitled to the said messuage or mansion house, lands, hereditaments, and premises, for the time being, with workmen, or others, in his, her, or their company, or without twice or oftener in every year, yearly, during the said term, at convenient times in the day-time, to enter and come into and upon the said demised premises, or any part thereof, there to view, search, and see, the state and condition of the reparation thereof; and all such defects, decays, and wants of reparation, upon every such view to be found, to give or leave notice or warning in writing at the said demised premises, to and for the said C. D., his executors, administrators, and assigns, to repair and amend the same, within the term or space of three months next following, within which said term or space of three months he, the said C. D., for himself, his executors, administrators, and assigns, doth hereby covenant, promise, and agree, to and with the said E. B., or such person or persons as shall

Power to enter and examine premises, and to give notice of want of reparation.

be entitled to the said capital messuage, or mansion house, lands, and premises, for the time being, well and sufficiently to repair and amend all and every such decays and want of reparation, (except as before is excepted,) he, the said C. D., his executors, administrators, or assigns, having rough timber first assigned to him for that purpose. (a) PROVIDED Proviso for ALWAYS, that if it shall happen the said yearly rent re-entry. of \mathcal{L} ——hereby reserved, or any part thereof, shall be behind or unpaid in part-or in all by the space of twenty-eight days next over or after any of the said days of payment on which the same ought to be paid as aforesaid, being lawfully demanded upon or at any time after the said twentyeight days, and not paid when demanded, (p) that then and from thenceforth it shall and may be lawful to and for the said A. B., and E. his wife, or the person or persons who shall be entitled to the said capital messuage or mansion house, lands, and premises, in remainder or reversion for the time being, his, her, and their, heirs or assigns, or any of them, into the said demised premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, retain, re-possess, and enjoy, as in his, her, or their, first and former estate, anything hereinbefore contained to the contrary in anywise notwithstanding. AND the For quiet said A. B., for himself, his heirs, executors, occupation. and administrators, and for the said E., his wife, doth hereby covenant, promise, and agree, to and with the said C. D., his executors, administrators,

executors, administrators, and assigns, well and truly observed, performed, and kept, according to the true intent and meaning of these presents; then," &c.

⁽o) Here may be added, "And also, that he, the said C. D., shall not Not to make cut, maim, alter, or injure, any of the principal timbers, roofs, or walls, of alterations. the buildings and premises hereby demised, nor convert, use, or occupy, the said premises, or any part thereof, into or for a shop, warehouse, or any other place for carrying on any art, trade, or business, or otherwise, than as a private dwelling-house, without the cousent in writing of the said," &c. [If no trade is to be carried on, the words, "Any act, trade, or business," will be sufficient; but particular trades should be specified.

—See the form of such specification, p. 494.]

(p) Here may be added, "Or if any or either of the covenants and agreements herein contained on the lessee's part, shall not be by him, his executors, administrators, and assigns, well and truly observed, per-

and assigns, that he, the said C. D., his executors, administrators, or assigns, paying the said yearly rent of —— pounds, in manner and form aforesaid, and observing, performing, fulfilling, and keeping, all and singular the covenants, grants, clauses, articles, provisoes, conditions, and agreements, which on his or their parts and behalf ought to be paid, observed, performed, fulfilled, and kept, shall and lawfully may peaceably and quietly have, hold, use, occupy, possess, and enjoy, the said capital messuage or mansion house, and all and singular other the premises, with their, and every of their. appurtenances, before by these presents demised and granted, or intended so to be, for and during all the said term of twenty-one years hereby demised, determinable as hereinafter is mentioned, without the lawful let, suit, trouble, molestation, or interruption, of, from, or by, the said A. B., and E., his wife, or either of them, or of, from, or by, any other person or persons whatsoever, freed, discharged, and acquitted, of and from the payment of land tax, and all other taxes, assessments, and payments, for water, or otherwise howsoever; and which said taxes, assessments, and payments, the said A.B. doth hereby covenant, promise, and agree, to and with the said C. D., his executors, administrators, and assigns, to pay and satisfy, and also to indemnify, the said (lesses), his executors, administrators, and assigns, of and from the payment of all, and every, or any, sum or sums of money in respect thereof. (The proviso for determining the lease at the option of the parties, or either of them, may be added here. See p. 501.) In witness, &c.

Taxes to be paid by lessor.

(9.)

Lease of a Cottage and Land from Husband and Wife for ninety-nine Years, determinable on the Death of Wife, (she being Tenant for Life).(q)

Parties.

This indenture made the —— day of, &c., BE-TWEEN A. B., and C., his wife, (before her marriage

⁽q) In this case the wife was entitled for life, and the lease was made to a remainder man in fee simple, at a rent of so much per acre.

with him C. F., spinster,) of the one part, and D. E., of, &c., of the other part; WITNESSETH, that Witnesseth in consideration of the rent hereby reserved, and of the covenants, provisoes, and agreements, hereinafter contained, on the part and behalf of the said C. D., to be paid, done, and performed, they, the said A. B., and C., his wife, no by these presents, grant, demise, and to farm let, unto the said C.D., his executors, administrators, and assigns, all, &c., and now in the possession or occupation of the said A.B., his undertenants, or assigns, together with all and singular paths, &c.; TO HAVE AND TO HOLD the Habendum. said pieces or parcels of land, hereditaments, and premises mentioned, and intended to be hereby demised, with the appurtenances, unto the said C. D., his executors, administrators, and assigns, for and during the term of ninety-nine years, to be computed from the 25th day of March last, from thence next ensuing, and fully to be complete and ended, if the said C. D. shall so long live; YIELDING Roddendum AND PAYING therefore yearly, and every year during the continuance of this demise, unto the said M. B., and her assigns, the yearly rent of, &c., being after the proportion of £ --- per acre, on two certain days or times of the year, (that is to say,) the 25th day of March, and the 29th day of September, in every year, by equal portions, the first payment thereof to begin and be made at or upon the 29th day of September next ensuing the date of these presents. PROVIDED ALWAYS, and it is Proviso for re-entry on hereby declared, that in case the said yearly rent non-pay of £ —, proportionably as aforesaid, or any part ment, &c. thereof, shall happen to be behind or unpaid by the space of thirty days next after the same shall become due and payable, according to the true intent and meaning of these presents, being lawfully demanded, that then and in that case, and thenceforth, it shall and may be lawful to and for the said C.D., and her assigns, into the said messuage, &c., and the same to have again, re-possess, and enjoy, as in her or their former estate, anything herein contained

Covenant for payment of the rent and taxes.

to the contrary notwithstanding. And the said D. E., for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said C.D., and her assigns, in manner following, (that is to say,) that he, the said D. E., his executors and administrators, shall and will well and truly pay, or cause to be paid, during the continuance of this demise, to the said C.D., and her assigns, the said yearly rent, proportionably as aforesaid, hereby reserved from time to time, as and when the same shall become due and payable; and shall and will pay and discharge the land tax, and all, and all manner of, other taxes, assessments, and impositions, whatsoever, which now are taxed, charged, assessed, or imposed, upon the said premises, or any part thereof, or upon the said A. B., his executors, administrators, or assigns, in respect AND further, that he, the said D. E., his executors, administrators, or assigns, shall and will husbandlike during the said term of ninety-nine years, determinable as aforesaid, use the said lands and premises in an husbandlike manner; and shall and will keep and maintain the hedges, fences, gates, and stiles thereof, in good and sufficient tenantable order and repair. In witness, &c.

Lease of a Farm and Lands from a Widow, by Virtue of a Power under her marriage Settlement.

Parties.

Testatum.

And to

manage lands in a

manner.

This indenture made the —— day of, &c., BE-TWEEN M. B., of, &c., (widow, and relict of A. B., late of the same place, Esq., deceased,) of the one part, and C. D., of, &c., of the other part, wir-NESSETH, that under and by virtue of a power given or reserved to the said M. B., in and by a certain Reference to indenture of release, dated, &c., (being the settlement made in contemplation of the marriage with the said A. B., deceased, and which afterwards took effect) and for and in consideration of the rents covenants, and agreements hereinafter reserved and

contained on the part of the said C. D., his executors, administrators, and assigns, to be paid and performed, she the said M. B., doth by these presents demise, lease, and to farm let, unto the said C. D., his executors, administrators, and assigns, ALL that messuage or tenement, and farm, called, &c., with the yard, barns, stables, out-houses, and Farm and appurtenances thereto belonging; and also all those premises. several fields, closes, and parcels of arable, meadow and pasture land, thereunto belonging, and hereinafter particularly described, (that is to sav), all that piece or parcel of pasture ground, called the, &c., containing by estimation, &c., (be the same more or less,) &c., &c., together with all ways, commons, waters, profits, and advantages, whatsoever, to the said messuage or tenement, farm and premises, belonging or appertaining, (except, &c.,)(r) to have AND TO HOLD the said, &c., unto the said C. D., his Habendum. executors, administrators, and assigns, from, &c., for and during the term of twenty-one years from thence next ensuing, HE the said C. D., his executors, administrators, and assigns, yielding and pay-Reddendum ing for such tenure and occupation of the said premises, unto the said M. B., and her assigns, or unto such other person or persons as may be entitled as aforesaid, the yearly rent or sum of \pounds ——, of lawful money of Great Britain, the same to be paid by equal quarterly payments, on the several days, following; namely, on, &c., &c., in every year, by

(r) The exception ran thus: "Except and always reserved out of these Exception, presents unto the said M. B., and her assigns, during such part of the term hereby demised, as she shall live, and from and after her decease, unto such person as shall from thenceforth, during the remainder of the said term, be entitled to the freehold and inheritance of the said premises, all timber and other trees now standing and being, or which shall at any time during the continuance of this demise stand or be, upon the said demised premises, (other than such as are hereinafter agreed to be allowed the said C. D., his executors, administrators, and assigns, for repairs as hereinaster is covenanted for.) with free liberty of ingress and regress for the said M. B., and her assigns, or such other person or persons as shall be entitled as aforesaid, her and their agents and workmen, with horses, carriages, and otherwise, to and from any part of the said hereby demised premises, to cut down and carry away the said trees, making reasonable satisfaction unto the said C. D., his executors, administrators, or assigns, for any damage he or they may sustain thereby, and also free liberty at all times to view the state of the trees upon the said premises."

pay rent clear of all deductions.

equal portions, the first quarterly payment to begin and be made on, &c., next ensuing the date of these presents, and also yielding and paying, &c.(s) Covenant to (Add a covenant by the lessee, with the said M.B., and her assigns, "and also to and with the person and persons who shall be entitled to the freehold and inheritance of the premises hereby demised, from and after her decease, for the then residue

C.D. to keep the buildand fences, in good repair.

And at the in such repair.

sor to enter tice being given.

And in case of decays lessee agrees to repair.

of the term hereby granted his, her, and their heirs, executors, administrators, and assigns." For payment of the rent free from taxes, see p. Covenant by 520.) And further, that he, the said C.D., his, &c., will at his and their own proper costs maintain and ings, hedges, keep the said messuage, &c., and the hedges, &c., in good repair, (damages happening by casual fire only excepted,) being allowed timber in the rough. bricks, &c., for the doing thereof; and will, at the end or other sooner determination of the said end of the term, peaceably yield up the same premises unto up the same the said M. B., or her assigns, or unto such other person or persons as shall then be entitled thereto. in such good and sufficient repair as aforesaid. And for les- AND FURTHER, that it shall be lawful for the said sor to enter M. B., and her assigns, during such part of the year of the said term hereby demised as she shall live, and term to view term to view &c., on no- after her decease for such person or persons as tice being shall then be entitled as aforesaid, with workmen given. or otherwise, twice in every year during the said term, at seasonable times in the day time, to enter, &c., to view, &c., (notice of such review being at all times previously given unto the said C. D., his executors, administrators, and assigns, one day at least before the same shall take place,) and in case of any decays being found, &c., the said C. D., for himself, his, &c., covenants with the

(s) Here was added, "And also yielding and paying by like equal portions, on the several days aforesaid, an additional yearly rent or sum of Eventual Mints. For ploughing pasture.

Lead of like lawful money, for every acre, and proportionably for any
ing pasture.

greater or less quantity than an acre, of the pasture or meadow ground
hereby demised, which at any time, during the continuance of this demise, shall be ploughed up or converted into tillage, without the consent in writing of the said M. B., or such other person or persons as shall be entitled as aforesaid, first obtained for the purpose."

said M. B., and her assigns, and to and with such other person or persons as may be entitled to the said premises after her decease, his, her, and their heirs and assigns, to cause the same to be repaired accordingly, within the space of, &c., rough timber, &c., being allowed him and them for the doing thereof as aforesaid. (See p. 541.) AND FURTHER, that he, Lessee to the said C. D., his executors administrators and the premises assigns, shall, and will, at all times during the con- all the tinuance of this demise, spread and bestow in a husbandlike manner upon the lands and grounds hereby demised, all the compost and dung which shall from time to time be made on the said premises, by fodder of cattle or otherwise, (except only such compost or dung as shall be made in the last year of this demise, which the said C. D., his executors, administrators, and assigns, shall leave upon the premises for the said M. B., or her assigns, or such other person or persons as aforesaid, without being allowed anything for the same.) And further, that the said C.D., his executors, and assigns, shall not, nor will, crop of grain at any time during this demise, sow or crop any of two years the arable land hereby demised, with any grain or seed except clover, more than two successive years together, without permitting the same to have a summer's fallow; nor shall, nor will cross crop any of the said arable lands during the said term; nor mow any of the pasture ground hereby demised, more than once in any one year of the said term, but shall, and will, during this demise, plough, sow, manure, and manage all the lands and grounds hereby demised, in a due and regular course of husbandry, according to the custom of the neighbouring country. And further, that he, the said C. Lessee not D., his executors, administrators, or assigns, shall suffer to be not, nor will, at any time during the continuance of done, any this demise, do, or cause, or voluntarily suffer to be done, any manner of waste or destruction in or upon any part of the premises hereby demised; but shall, and will, at all times during the said term,

of land for crop at the

Landlord,

upon pre-

mises preceding the

determina-

to plough,

preserve from the browse of cattle, and other avoidable injury, all the young trees and underwood growing upon any part of the hereby demised premises. Preparation And further, that he the said C. D., his executors, administrators, or assigns, shall and will, in the sumend of term. mer immediately preceding the expiration of the term hereby granted, prepare in a husbandlike manner, twenty acres of such part of the arable land hereby demised, as shall be then in course of fallow, fit to be sown with a crop the ensuing season; and also lay down with clover seed and rye grass, ten acres more of the arable land hereby demised, which shall be then in tillage, sowing upon each acre thereof eight pounds of the best clover seed, and two bushels of rye grass seed. And moreover, that he, the said C. D., his executors, administrators, and assigns, &c., to enter shall and will permit, and it shall be lawful for the said M. B., or her assigns, if living, and for such tion of term other person or persons as shall be entitled as aforesaid, in case of her decease, his, her, or their assigns, from and after the first day of ---- next preceding the determination of this demise, with servants, horses, and implements of husbandry, to enter upon such closes, and grounds of the said hereby demised premises as shall then be in the course of fallow, and plough, till, and manure the same for the ensuing crop, without hindrance or molestation; and also for that purpose to take and have the dung and compost which shall then be in the yard or yards belonging to the said premises. Provided always, &c.(t) And the said M. B., for herself, her execu-

Timber for

Proviso for re-entry on non-pay-

(t) The proviso for re-entry ran thus: "Provided always, and these presents are upon this condition nevertheless, that if the said rents above reserved, or any of them, or any part thereof, shall be in arrear and unpaid ment of rent for the space of twenty-one days next after either of the said days whereon the same are appointed to be paid as aforesaid (the same being lawfully demanded); or if the said C. D., his executors, administrators, or assigns, shall not well and truly observe and perform all and every the covenants and agreements in these presents contained, on his and their parts to be observed and performed, then and from thenceforth, in either of the said cases, it shall be lawful for the said M. R., and her assigns, if living; and in case of her decease, for the person or persons who shall be entitled to the freehold and inheritance of the said premises hereby demised, to reenter into the same premises, or into any part thereof, in the name of the whole, and the same to have again, retain, and enjoy, as his, her, or their, former estate; and the said C. D., his executors, administrators, and asJ

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tors, administrators, and assigns, doth covenant, repairs. promise, and agree, to and with the said C. D., his executors, administrators, and assigns, in manner following, (that is to say,) that she, the said M. B., or her assigns, during such part of the term hereby granted as she shall live, and from and after her decease, such person or persons as shall from thenceforth be entitled to the freehold and inheritance of the said demised premises, for the remainder of the said term, shall and will, as often as there shall be occasion during this demise, find and allow unto the said C. D., his executors, administrators, and assigns, either upon the said premises, or within three miles' distance therefrom, rough timber on the stem, bricks, tiles, and lime, for the necessary repair of the said messuage or tenement, outhouses, buildings, and premises, hereby demised, with the gates, stiles, pales, rails, and fences, belonging thereto; the said materials to be carried to the places where the same are to be used, at the charge of the said C. D., his executors, administrators, and assigns. And also, that it shall be lawful for the Toplash said C. D., his executors, administrators, and hedges. assigns, during the continuance of this demise, at seasonable times in the year, to cut and plash, in a husbandlike manner, the quick hedges belonging to the said demised premises, saving and preserving all such young trees therein as may be likely to become timber, and likewise to lop the pollard trees growing upon the premises hereby demised, (so that the said hedges, and the said pollard trees respectively, be not plashed and lopped oftener than once in every year,) and employ the wood which shall be got from such trees and hedges, to his and their own use, provided the said C.D., his executors, administrators, and assigns, shall well and sufficiently make up again such hedges, as often as the same shall be,

signs, and all other tenants and occupiers of the said premises, thereout and from thence utterly to expel and remove; and from and after such re-entry made, this lease, and everything herein contained, shall determine and be utterly void to all intents and purposes, anything in these presents contained to the contrary thereof notwithstanding.

For tenant to sell hay on spread-

plashed, and clear out the ditches belonging thereto. or otherwise fence in and preserve such hedges from the browse of cattle and other avoidable injury. AND also that he, the said C. D., his executors, administrators, and assigns, shall at any time during ing compost. this demise, except only in the last year thereof, having liberty to sell and dispose of any quantity of hay and straw arising from the said premises, on his and their spreading upon such parts of the same premises as shall stand in most need of compost. one good load of rotten dung for every load of hay or straw that shall be carried off the premises. And also that the said C. D., his executors, administrators, and assigns, paying the rents, &c., shall peaceably enjoy the said messuage or tenement, and other the premises hereby demised, with their appurtenances, during the term hereby granted, without hindrance or interruption by the said M. B.. or her assigns, or any other person lawfully claiming from or under her, them, or any of them.(2) In witness, &c.

For peaceable enjoyment

(11.)

A Lease of a small Farm and Lands, (Part frechold and Part copyhold).

Parties.

This indenture made the —— day of — 1838, between A.B., of, &c., for himself, his heirs and assigns, of the one part, and C. D., of, &c., for himself, his heirs, executors, administrators, and assigns, of the other part, WITNESSETH, that for and in consideration of the rent and covenants hereinafter reserved

Witnessing clause.

proviso for sooner determination of the said C. D., his executors, administrators, or assigns, to determine and make void this present lease, at the expiration of the first seven or fourteen years of the said term hereby granted, on his or their causing notice in writing of such his or their intention, to be given to, or left for, the said M. D., or her assigns, if them living; and in case of her decease, to and for such other person and persons as shall then be entitled as aforesaid, at his, her, or their, usual place. sons as shall then be entitled as aforesaid, at his, her, or their, usual place or places of abode, six calendar months at least before the time mentioned in such notice for determining the same, anything hereinbefore contained to the contrary thereof in anywise notwithstanding."

and contained on the part of the said C. D., to be paid, done and performed, he, the said A.B., doth by Operative these presents demise, grant, and farm let unto the said part. C. D., ALL that messuage or tenement, commonly called or known by the name of, &c., lying and being in the parish of,&c., in the said county of, &c., together with the several pieces or parcels of arable, meadow, and pasture land, called, &c., thereto belonging, late in the possession of, &c.; together with all barns, General stables, outhouses, commons, profits, ways, waters, words. water-courses, easements, and appurtenances whatsoever to the said messuage or tenements belonging; excepting and always reserving out of this present Exception demise and grant unto the said A. B., his heirs and of timber. assigns, all timber trees and other trees now standing, growing, or being, or which at any time during the term hereby granted, shall stand, grow, or be in or upon the said demised premises, or any part thereof, with liberty to fell, cut down, take and carry away the same; and all mines and quarries in and under the said premises, with liberty to work the same. To HAVE AND TO HOLD such part and Habendum parts of the demised premises, with the appurte- as to free-hold. nances, as is or are freehold, with the appurtenances, unto the said C. D., from the 25th day of March next ensuing, for the term of seven years thence next following; AND TO HAVE AND TO HOLD all such Habendum part and parts of the said demised premises as is or as to copyare copyhold, with the appurtenances, unto the said C.D., from the said —— day of, &c., for the term of one year, and so on from year to year until the expiration of the said term of seven years, if the lord or lady for the time being, whereof the same copyhold premises are holden, shall consent thereunto, and if, according to the custom of the said manor, the same may be so demised, without prejudice or forfeiture, but not otherwise, (v) at and under the

(v) Copyhold land cannot be demised by the copyholders except by special custom, or by license from the lord, for a longer period than one year, without incurring a forfeituse.—See Melwick v. Luter, 4 Rep. 26; and see Lukin v. Nunn, 11 Ves. 170. But though void against the lord for want of license, will be binding on the parties themselves.—Wells v. Partridge, Cro. Eliz. 469. Salisbury d. Cooke v. Hurd, Cowp. 481.

Rent

Eventual rent.

yearly rent of £60 of lawful money of Great Britain, payable quarterly, the first payment to be made on the — day of — next. And also paying to the said C. D., upon the days of payment of the said yearly rent above reserved, and over and above the same rent, the further rent or sum of £10 of like lawful money, for every acre (and so proportionably for every greater or lesser quantity) of the meadowor pasture ground hereby demised, which he the said C. D., his executors, administrators, or assigns, shall at any time during the said term hereby granted, plough, dig up, or convert to tillage, or cause, or procure, permit, or suffer to be ploughed up, dug, or converted to tillage; the first payment thereof to begin at that day of payment of the said yearly rent hereinbefore reserved, which shall next happen after any part of the said meadow or pasture ground shall be so ploughed up, dug, or Covenant to converted to tillage. And the said C. D. doth covenant and grant to and with the said A. B., in manner and form following, that is to say, THAT he, the said C. D., shall and will well and truly pay, or cause to be paid, unto the said A. B., his heirs or assigns, the said yearly rents hereinbefore reserved, in manner and form before expressed, according to the true meaning of these presents. And also, that he, the said C. D. will keep in good and sufficient repair during the said term, all the glass windows to the dwelling house, and all the walls, gates, stiles, bounds, and fences, belonging to the said demised premises, being allowed timber in the rough by the said A. B., for the doing thereof. And also scour and cleanse all the ditches and water courses on the said premises, and will leave the same well and sufficiently repaired, scoured, and cleansed, at the end of the said term. And also hay, fodder, will in a husbandlike manner, spend and employ in and upon the said premises, all the hay, straw, fodder, dung, muck, and soil, which shall happen to be made or arise there at any time during the said term. And will permit and suffer the present

To repair.

pay rent.

To scour ditches.

And spend &c., on premises.

Crop of

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tenant (E. F.) to take off his crop of corn at the next present harvest, which shall or may be sown this year on the said demised premises. And also that the said To sow C.D. will sow twenty acres of arable land to clover twenty acres every year during the said term, and leave twentyfive acres of the said land sufficiently sown to clover at the end of the said term; also shall and will leave yearly, and every year during the said term one half of the said arable land as a summer fallow unsown. And also that the said C. D., shall not nor will mow Not to mow any part of the D. ground during the said term, nor ground. do, or commit, or permit, or suffer to be done or committed, any waste, spoil, or destruction, in or upon the said premises, or any part thereof. And the said A. B. doth covenant and grant, to Covenant by and with the said C. D., that he, the said A. B., lessor to repair will at all times during the said term hereby granted, well and sufficiently repair, uphold, and keep the said messuages, and other the premises hereby demised, (except the glass windows thereof,) in all needful and necessary reparations, when and as often as need shall require. And also will at all times dur- Taxes. ing the said term hereby granted, bear, pay, discharge, or abate, deduct, and allow, out of the said yearly rent hereby reserved, all taxes, rates, and payments whatsoever, wherewith the said premises shall or may be charged or chargeable, (except the house and window taxes,) during the said term. AND, that he, the said A. B., will put the dwelling Lessor to put premihouse, and outhouses, walls, gates, and fences, in ses in retenantable repair, on or before the —— day next. pair. Provided always, and it is hereby declared, that Proviso for if it shall happen the said yearly rent by these re-entry. presents reserved, or any part thereof, shall be behind and unpaid, in part or in the whole, by the space of thirty days next after either of the quarterly days whereon the same reserved rent is covenanted to be paid, although no formal or legal demand shall have been made thereof; or in case of the breach or non-performance of any of the covenants and agreements contained in these presents,

on the part of the said C. D., that then, and in any of such cases, it shall and may be lawful to and for the said A. B., his heirs and assigns, into the said demised premises, or into any part thereof in the

Lessor to quietly enjoy.

so many acres of the from the end of the term a barn to

To execute fresh leases

thresh out his corn.

name of the whole, to re-enter, and the same premises and every part thereof to have again, repossess, and enjoy, as in his or their former estate, anything herein contained to the contrary thereof in anywise notwithstanding. And also, lastly, it is hereby covenanted and agreed, that he, the said C.D., shall and may from time to time, and at all times during the said term hereby granted, paying the rents and performing the covenants contained in these presents peaceably and And to hold quietly hold and enjoy, &c. And shall and may hold and enjoy five acres of the arable land belonging to the arable land said demised premises, from the end of the said term hereby granted, till the end of the harvest then next till after following, and the use of the barn to thresh out his corn in, for —— months after the end of the said term, and house-room to lodge in, with liberty to fodder his cattle upon the ground called H. and M., until the —— day of, &c., after the expiration of the AND, lastly, that he, the said A. B., said term. of copyhold. shall and will at the end of the said term of one year for which the said copyhold premises are hereby demised, at the request of the said C. D., but at the equal costs of the said A. B., and C. D., make and execute a new lease of the copyhold premises to the said C. D., for one year more, (w) and so on at the end of every year during the said term of seven years, make and execute a new lease of the copyhold premises for one year only, which, with the freehold premises, shall be at and under the said rents, covenants, and conditions, respectively, as aforesaid. In witness, &c.

Forfeiture.

⁽w) It has been decided that a number of leases for one year, executed at the same time, each to take effect after the determination of the preceding one, is a forfeiture. - Matthews v. Whetton, Cro. Car. 235.

(12.)

Lease of several Closes of Land for fifty Years, during the joint Lives of Lessor and Lessee, with separate Habendums as to different Parts of the Premises, in Respect to the Commencement thereof. (x)

This indenture made, &c., Between A. B., (les-Date. sor,) of, &c., of the one part, and C. D., (lessee,) Parties. of, &c., of the other part; WITNESSETH, that for and Witnesseth. in consideration of the yearly and eventual rents, and of the covenants and agreements hereinafter reserved and contained, on the part and behalf of the said C. D., his executors, administrators, and assigns, to be paid, done, and performed, he, the said A. B., DOTH by these presents demise, grant, and to farm let, unto the said C. D., and his assigns, ALL those two closes of arable land called by the Description names of S. and E., containing together by estima- of parcels. tion, — a., — r., — p., be the same more or less; and also, all, &c., containing ten acres, (be the same more or less,) lying dispersedly in a field called C.; and also, those pieces or parcels of arable land containing by estimation, &c., (be they more or less,) lying dispersedly in another field called the L. field; AND also, all that close of pasture ground called Great G., containing by estimation, &c. (be the same more or less); AND ALSO all that barn belonging to the said A. B., in C. aforesaid, called the L. Barn, lying below the court and barn near the dwelling-house of him the said A. B., and the ox-house and court called the Lower Court, thereto adjoining. And also all that close of arable land called C. close, containing by estimation one acre, (be the same more or less). And all those several

3 A 3

⁽x) Where a lease contained a demise of two separate farms, with two Stamp on habendums differing from each other; a reservation of a separate rent in demise of respect of each farm, and separate covenants, some applying to one farm, two separate and some to the other, the lessee entered upon the whole at one time; it farms. was held that one ad valorem stamp for the amount of both rents was sufficient.—Blount v. Pearman, 1 Scott, 55. 1 Bing. N. R. 408.

pieces of arable land, containing by estimation, &c., (be they more or less,) lying dispersedly in another field called the W. Field. All of which said closes, lands, and premises, are situate, lying, and being in the parish of C., aforesaid. Together with all ways, waters, water-courses, commons, easements, previleges, and appurtenances whatsoever, to the said hereditaments and premises, and every part thereof now used or belonging, or in anywise appertaining. Except and always reserved out of this demise and grant unto the said A. B., and his assigns, all timber trees, and trees likely to become timber, wood, and underwood, now growing, or being, or which shall hereafter grow or be in or upon the said demised premises, or any part the reof, with full and free liberty of ingress, egress, and regress for the said A. B., and his assigns, at all seasonable times, to cut, fell down, cart, take, and carry away the same, (doing as little damage as possible to the Habendum. crops then growing upon the said premises). HAVE AND TO HOLD the said two closes called S. and E., and the said ten acres in C. Field, and the said pieces in the L. Field aforesaid, with their and every of their, rights, members, and appurtenances, (except as before excepted,) unto the said C. D., and his assigns, from the 29th day of September last past, for and during, and unto the full end and term of 50 years thenceforth next ensuing, and fully to be complete and ended, if they, the said A. B. and C. D., shall jointly so long live. AND TO HAVE AND TO HOLD the said close called Great G. lands, with the appurtenances, except as before excepted, UNTO the said C.D., and his assigns, from the 25th day of March next ensuing the date of these presents, unto the full end, and for and during the like term of fifty years thenceforth next ensuing, and fully to be complete and ended, if they the said A. B. and C. D. shall jointly so long live. AND TO HAVE AND HOLD the said barn, ox-house, and lower court, the said C. Close, and the said twelve

acres in the W. Field aforesaid, with their appurte-

Exception.

habendum.

Second

Third habendum.

nances, (except as before excepted,) unto the said C. D., and his assigns, from the 29th day of September next ensuing the date of these presents, for and during, and unto the end of the like term of fifty years thenceforth also next ensuing, and fully to be complete and ended, if they, the said A. B. and C. D. shall jointly so long live, YIELDING Redden-AND PAYING yearly, during the said respective dums. terms unto the said A. B., and his assigns, for the said two closes called S. and E., the said ten acres in the C. Field, and the said pieces in the L. Field aforesaid, with the appurtenances, the rent or sum of, &c.; and for the said close called G. G., with the appurtenances, the rent or sum of, &c.; and for the said barn, ox-house, and lower court for the said C. Close, and thein the W. Field aforesaid, with their appurtenances, . the rent or sum of, &c., of lawful money, &c., on the two most usual days or times of payment in the year, that is to say, the 25th day of March, and the 29th day of September, by equal portions; the first payment of the said yearly rent of, &c., to begin and be made on the 25th day of March next ensuing; AND of the said yearly rent of, &c., on the 25th day of September, also next ensuing; AND of the said other rent of, &c., on the 25th day of March A further next ensuing; AND also yielding and paying for sum for ploughing every acre of the said close called G. G., hereby certain demised, as shall be dug up, ploughed, or converted to tillage, during the said term hereby granted, the sum of five pounds of like lawful money, at, &c., yearly, and so in proportion for any greater or less quantity; PROVIDED ALWAYS, and To re-center it is hereby declared and agreed, that if the said payment of several yearly rents, or any of them, or any part of rents. them, or any or either of them, shall happen to be behind, &c., to re-enter; (and add a covenant for And to repayment of the rent, and to repair,) (except the pair. walls, gates, stiles, posts, and the rails thereof,) and to yield up, &c.; he, the said C. D., and his assigns, having, and taking, in and upon

Lessor to enter on & certain part until the commencement without paying rent.

repair barn.

the said demised premises, reasonable hay-boot, to be spent on the premises, and not elsewhere.(y) And also, that it shall and may be lawful to and for the said C.D., and his assigns, to enter into and upon the said lower barn, ox-house, and lower court, upon the —— day of —— next ensuing; and thenceforth to hold and enjoy the same, until the commencement of the said term thereof granted, Laudlord to without paying anything for the same. ALSO that the said A. B., and his assigns, shall and will, as soon as conveniently can be, cause the said lower barn, ox-house, and premises hereby demised, to be well and sufficiently amended in all places where the same shall be wanting, in, by, and with, all and all manner of needful and neces-

To stack up hay.

And to apend hay and straw upon premises.

landlord to permit tenant to use a certain barn for

premises.

turn the dung made

(y) The following covenants were inserted here: "And likewise, shall and will in a good and husbandlike manuer, set up and place in some convenient part or parts of the said demised premises, all the hay and straw which, during the said respective terms, shall grow or arise out of or upon the same premises, and thereout give and allow from time to time, during the said respective terms, unto the said A. B., and his assigns, safficient quantities of straw or litter for his horses and swine at C. aforessid, as he and they shall have occasion for the same; he and they giving and allowing in return unto the said C. D., and his assigns, all the duag which shall be made therefrom, except as hereinafter mentioned; and shall and will spend all the said hay and straw so to grow or arise from the premises, in and upon the said premises; and all the dung and compost thereby made, and also such as shall be made, out of the given straw by the said A. B., and his assigns, so to be delivered to him, and the dung so returned as aforesaid, shall carry out, lay, and spread about, in a husband-like manner, upon such parts of the said premises where there shall be Covenant by most occasion for the same, and for the better improvement thereof. And the said A. B., for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, to and with the said C. D., his executors, administrators, and assigns, by these presents, that he, the said A. B., and his assigns, shall and will permit and suffer the said C. D., and his assigns, to have the use of the upper barn, next to the said dwelling-house, threshing. for the purpose of thrashing out therein his and their wheat, only at such times during the said respective terms as the said A. B., and his assigns. And to place can conveniently spare the same. And also, to place and keep in the ricks upon upper court adjoining to the said upper barn, one or more ricks of the corn certain parts arising from the said demised premises from time to time, during the said of landlord's respective terms, at such times as the said A. B., and his assigns, can conveniently spare the rick staddles therein, and to take and carry away the same at his and their free will and pleasure, the same to be done in such a manner as not to incommode or inconvenience the said A. B., his Lessor to re- family, or assigns, at the said dwelling-house thereby. And also, that be, the said A. B., and his assigns, being allowed straw for litter for his horses and swine as aforesaid, shall and will from time to time, during the said of straw sent respective terms, give and allow in return unto the said C. D., and his him by les- assigns, for the purpose hereinbefore expressed, all the dung and compost lee for litter, which shall arise or be made therefrom, except only so much thereof as except for the said A. B., and his assigns, shall from time to time think necessary, his garden. or have occasion to use in his and their garden in C. aforesaid.

sary reparations and amendments; and in, by, and with, such reparations and amendments, shall and will afterwards keep and maintain the said lower barn and ox-house, and all the walls and buildings, also the gates, stiles, posts, and rails, of and belonging to the said premises during the said respective terms. And also shall and will pay, bear, and discharge, Taxos. or otherwise, from time to time, on payment of the said respective rents, deduct or allow the taxes and payments whatsoever, which shall or may be rated, charged, or assessed, upon the said demised premises, or upon the said C. D., or his assigns, for or in respect of the same, during the said respective terms, (the tithes only excepted). AND, LASTLY, Covenant by lessor for that he, the said C. D., and his assigns, paying the lessee's enseveral yearly rents before reserved, and observing, payment on performing, fulfilling, and keeping, all and every rental the covenants, &c., peaceably to enjoy. In witness, &c.

(13.)

Lease of a House and Premises from a Person seized as Tenant in Tail.

This indenture, made the —— day of, &c., Parties. between A.B., of, &c., (the tenant in tail,) of the one part, and C. D., of, &c., of the other part, WIT- Testatum. NESSETH, &c., (as usual,) he, the said A. B., DOTH by these presents demise and lease unto the said (lessee), his, &c., all, &c., (except, &c.,) TO HAVE Habendum. AND TO HOLD, &c., (as usual,) yielding and paying, therefore, yearly and every year during the said Reddendum term of twenty-one years hereby granted unto the said A.B., and the heirs of his body, (or, "the heirs male or female of his body,"(z) as the case may be,)

(z) A recital may be introduced that "The lessor is seized unto him, and Recitals in the heirs of his body, (or him, and the heirs male or female of his body, or leases of as the case may be,) of the hereditaments hereinafter mentioned, and hath tenants in contracted with the said lessee to grant him a lease thereof for the term, tail. and subject to the covenants and conditions hereinafter contained. Now this indenture," &c. (By the 32 Hen. VIII., c. 28, tenants in tail may make leases for three lives, or for twenty-one years, to commence from the making thereof, provided the accustomed yearly rent within the last

Covenants.

Proviso for

re-entry on non-pay-

ment, &c.

the yearly rent of, &c. Add a covenant by (lessee) with the tenant in tail, "and the heirs of his body," (or, "the heirs male or female of his body," as the case may be,) and in the same manner as to all other covenants. Provided Always, &c., add the power for (lessor), and the heirs of his body, (or the heirs male or female of his body, as the case may be,) to re-enter on non-payment of rent, &c.; and for (lessee) to quietly enjoy, &c. In witness,

(14.)

A Lease from Tenant for Life, and the Person entitled in Remainder.

Parties.

Testatum.

THIS INDENTURE, made the —— day of, &c., between A. B., of, &c., esquire, and C. B., of, &c., gent., (son and heir-apparent of the said A. B., of the one part, and C. C., of, &c., of the other part, WITNESSETH, that for and in consideration of the yearly rent, covenants, and agreements hereinaster reserved and contained on the part of the said C. C., his executors, administrators, and assigns, to be paid, done, and performed, they, the said A.B. and C.B., by these presents do, and each of them doth demise, lease, and to farm-let, unto the said C.C., ALL that, &c., together with all ways, &c., TO HAVE AND TO HOLD the said messuage or tenement, coach-house, stable, garden, yard, backside, and premises, with their appurtenances, unto the said C. C., his executors, administrators, and assigns, from, &c., unto the full end and term of Reddendum twenty-one years, yielding and paying, therefore, to tenant for yearly and every year during so many years of the said term of twenty-one years as the said A.B. shall live, unto the said A. B., and his assigns, the rent

Habendum.

life.

twenty years next before such lease be reserved. Such leases will be binding on the issue, but not on those in the remainder or reversion -Co. Lit 456. These leases must contain all such beneficial clauses and reservations as the remainder man is entitled to have, so that the estate may come to him in as beneficial a manner as ancient owners held it. Taylor v. Horde, 1 Burr. 121.)

of £---, lawful money of Great Britain, by equal portions, the first payment to begin, &c., and yield- Reddendum ing and paying unto the said C. B., his heirs and to remainder assigns, from and after the decease of the said A.B.. for and during the then residue and remainder of the said term of twenty-one years, the like yearly rent of £---, at the days, and by the proportions before limited for payment thereof. And the said C. C. doth hereby for himself, his heirs, executors. administrators, and assigns, covenant, promise, and agree, to and with the said A. B. and C. B., and the heirs and assigns of the said C. B., that he, the said C.C., his executors, administrators, and assigns, shall and will well and truly pay the said yearly rent of, &c., at such times and in such manner as aforesaid. AND FURTHER, that the said C. C., his executors, administrators, or assigns, shall and will at his and their own proper costs and charges, well and sufficiently repair, &c., during the term hereby granted,(a) and the said hereby demised premises being so well and sufficiently repaired, &c., (except as aforesaid,) at the end, or other sooner determination of the said term of twenty-one years which shall first happen, shall and will peaceably and quietly yield up to the said A. B. and C. B., or one of them, or to the heirs and assigns of the said C. B., together with all wainscots, partions, shelves, cupboards, dressers, locks, keys, bolts, iron bars, and other things, now belonging or affixed to the said messuage or tenement, coachhouse, and stable, and other the said hereby demised premises, and particularly mentioned in the schedule thereof hereunder written, in as good case and condition as the same now are, the reason-

(a) An exception was added here as follows: "Except for or in respect Exception. of any damage or want of repairs that may in any ways happen or be oc-casioned to the said messuage or tenement, or the foundation thereof, or to a wall of the same messuage on the east side thereof, towards the said coach-house and stable, by reason or means of a crack which now is, and for some years last past hath been, in the said wall, which damage or want of repairs, in case any such shall be by reason of the said crack in the said wall, is not to be made good or repaired by the said C. C., his executors, administrators, or assigns, but by the landlord or landlords for the time being of the same premises."

able use and wear thereof in the mean time only excepted. And also, that it shall and may be lawful, to and for the said A. B. and C. B., and the heirs and assigns of the said C. B., with workmen, &c., to enter to view the repairs, &c. PROVIDED ALWAYS, &c. (for re-entry on non-payment of Quietenjoy- rent).(b) And the said A. B., for himself, his executors, and administrators, and the said C. B., for himself, his heirs, and assigns, do, and each of them doth covenant, promise, and agree, to and with the said C. C., his executors, administrators, and assigns, that he, the said C. C., his executors, &c., paying the said yearly rent of ---, hereby reserved, and performing, &c., to enjoy, &c., without the lawful let, &c., of the said A.B. and C. B., or either of them, their, or either of their heirs or assigns, or of. or by, any person or persons lawfully claiming, or to claim, from, by, or under them, or either of them, respectively. Provided Always, and it is hereby declared and agreed, by and between all the said parties to these presents, that in case the said C. C., his executors, administrators, and assigns, shall be minded at the end of the first - years of the said term of twenty-one years, to leave, &c., and of such his or their mind shall give or leave

Proviso for sooner determination.

ment.

Proviso for re-entry.

notwithstanding. In witness, &c.

notice in writing, to or for the said A. B., and C. B., or either of them, or the heirs or assigns of the said C. B., at any, or either of his or their then respective dwellings or places of abode, six calendar months or more before the end and expiration of the said first fourteen years, that then, and in such case, &c., anything herein contained to the contrary thereof

⁽b) The proviso for re-entry was thus: "Provided always, that if it shall happen that the said yearly rent of \mathcal{L} — shall be behind or unpaid, in part or in all, by the space of twenty-one days after any of the said days on which the same ought to be paid as aforesaid being lawfully demanded, that then it shall and may be lawful to and for the said A. B. and C. B., or one of them, or the heirs or assigns of the said C. B., into the said messuage or tenement and premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, retain, re-possess, and enjoy, as in his or their first and former respective estates and interests therein, anything herein contained to the contrary notwithstanding.

(15.)

Lease of a Royalty of hunting, hawking, fishing, and fowling, appertaining to a Manor.(c)

THIS indenture, made the —— day of, &c., Parties. between A. B., of, &c., Esquire, of the one part, and C.D., of, &c., Gent., of the other part, WITNESSETH, Considerathat in consideration of the yearly rent and of the tion. covenants hereinafter mentioned, he, the said A.B., doth by these presents demise unto the said C. D., his executors, &c., ALL that the royalty of hunting, Royalty. hawking, coursing, fishing, fowling, and sporting, belonging to him, the said A. B., within the manor of M. aforesaid; and also all profits, benefits, and advantages, whatsoever, to the said royalty, of hunting, hawking, fishing, fowling, and sporting, belonging or appertaining; TO HAVE AND TO HOLD the said Habendum. royalty and liberty of hunting, hawking, fishing, and fowling, so hereby demised, with their, and every of their appurtenances, unto the said C.D., his executors, administrators, and assigns, from the -day of, &c., for and during, and unto the full end and term of seven years from thence next ensuing, and fully to be complete and ended; yield- Reservation ing and paying, therefore, yearly and every year, during the said term of seven years, unto the said A. B., his heirs and assigns, the rent or sum of, &c., of lawful money of Great Britain, at the two following days in the year, (that is to say,) the —— day of, &c., and the —— day of, &c., by even and equal portions, the first payment to be made on the. day of, &c., next, without any deduction or abatement for taxes charged or imposed by parliament, or otherwise, howsoever. And the said C. D., for Covenant by himself, his heirs, executors, administrators, and payment of assigns, doth covenant, promise, and grant, to and rent. with the said A. B., his heirs and assigns, that he,

⁽c) A demise of an incorporeal hereditament must be by deed, and it seems, although a right of hunting and sporting be demised by parol with a messuage, yet it is void.—Bird v. Higginson, 4 Nev. & M. 506. 2 Adol. & Ellis, 696. Har. & Wol. 61.

the said, C. D., his executors, administrators, and assigns, shall and will, during the said term, well

Proviso in case of nonpayment of rent for the lease.

For peaceable enjoy-

and truly pay, or cause to be paid, unto the said A.B., his heirs or assigns, the said yearly rent of, &c., on the days and times hereinbefore limited for payment thereof, without any deduction as aforesaid. PROVIDED ALWAYS, that if the said yearly rent or sum of, &c., or any part thereof, shall be behind and making void unpaid, in the whole or in part, by the space ofdays next after any of the said days before mentioned for the payment thereof, during the said term, then and in such case these presents shall be void, (or say, then and from thenceforth, it shall and may be lawful for the said A. B., his heirs or assigns, to make void the lease hereby made, or intended to be made by these presents, and enjoy the premises hereinbefore mentioned, to be granted as in his and their former estate and estates). (d) And the said ment by les. A.B., for himself, his heirs, and assigns, doth covenant, promise, and grant, to and with the said C.D., his executors, administrators, and assigns, that he, the said C. D., his executors, administrators, and assigns, paying the said yearly rent of, &c., and performing the covenants, on his and their parts and behalf to be performed and kept, shall and may, from time to time, and at all times hereafter during the continuance of the said term hereby demised, peaceably and quietly have, hold, occupy, possess, and enjoy the said royalty of hunting, hawking, fishing, and fowling, with their appurtenances hereby demised, and every part and parcel thereof, with their incidents belonging and appertaining, without any the let, suit, trouble, eviction, or disturbance, of him the said A. B., his heirs or assigns, or any other person or persons whatsoever, claiming, or to claim, by, from, or under him, them, or any of them, or by his, their, or any of their, acts or means. &c.

⁽d) By these words the lord might either enforce the forfsiture or

(16.)

Lease from a Lord of a Manor of a Fishery, also of hunting and hawking, with an Appointment as Keeper of the Game.

This indenture, made the --- day of, &c., Parties between A. B., of, &c., lord of the manor of, &c., in the county of, &c., of the one part, and C. D., of, &c., of the other part, witnesseth, that in consi- Testatum. deration of the yearly rent and covenants hereinafter reserved on the lessor's part to be paid and performed, he, the said A. B., doth by these presents demise unto the said C. D., ALL that the fishery, and liberty of fishing, of him, the said A. B., in the rivers of B. and H., and all other his the said A.B.'s liberty of fishing and fishery, in the county of H., (except, &c.); AND the said A. B. doth also, by these presents, demise unto the said C. D., all that the liberty of hunting(c) and hawking within the said manor, exclusive of all others. And doth hereby constitute and appoint him the said C. D., keeper of the game there. To HAVE AND TO HOLD the Habendum. said fishery, liberty of fishing, hawking, and hunting, aforesaid, with their and every of their appurtenances, (except as before excepted,) unto the said C. D., his executors, administrators, and assigns, from the —— day of, &c., next ensuing, for and during, and unto the full end and term of five years from thence next ensuing, and fully to be complete and ended; yielding and paying, therefore, yearly Reddendum and every year, during the said term of five years, unto the said A.B., his heirs and assigns, the yearly rent or sum of, &c., at, &c., by even and equal portions, without any deduction whatsoever. [Add a covenant for payment of the rent without deduction, with a proviso for making void the lease(e) on non-payment of the rent, and a covenant from (lessor) for peaceable enjoyment by the (lessee).

In witness, &c.

⁽e) See precedent, No. 15. 3 B 2

(17.)

Lease of a House from Persons entitled as Tenants in common.(f)

Parties.

This indenture, made, &c., between A. B., of, &c., (one of the tenants in common,) of the first part, C. D., of, &c., (the other tenant in common,) of the second part, and the (lessee), of, &c., of the third

Testatum.

part, WITNESSETH, that in consideration (g) of the rents, covenants, and agreements, hereinafter re-

A. B. as to his moiety.

served and contained, &c.,(h) the said A. B., as to one undivided moiety, or equal half part, or share

the whole into two equal parts to be divided, of and in the messuage or tenement hereinafter described,

C. D. as to his moiety.

with the appurtenances; and the said C. D., as to one undivided moiety or equal half part, or share the whole into two equal parts or shares to be divid-

ed, of and in the same messuage and premises, do, and each of them doth, by these presents, (according to their several and respective shares and pro-

portions aforesaid,) demise and lease unto the said (lessee,) his executors, administrators, and assigns,

Habendum, ALL, &c., together with all ways, &c., TO HAVE AND TO HOLD the said, &c., unto the said (lessee), his executors, administrators, and assigns, for, and

Joint tenants.

(f) If the lease be from joint tenants, the instrument should be made between the joint tenants of the one part, and the lessee of the other part; and the testatum part will be in consideration of the rent, &c., they, the said joint tenants, "do demise and lease," &c.; to hold, &c., "yielding and paying unto them," and their respective heirs and assigns, the sum of, &c.; and the lessee will covenant with them, (the lessors,) and their respective heirs, &c., to pay the rent to the said lessors, and their respective heirs; and that it shall be lawful for the said lessors, and their respective heirs, to enter and view &c.; and the lessors will covenant for the mealway and to enter and view, &co.; and the lessors will covenant for themselves and their respective heirs, &co. (Leases granted by joint tenants, they having but one freehold in the premises granted by them, the same form as to the demise or operative part, as also the reservation to, or covenant with them, are made precisely in a similar manner as when the lease is made by a sole

Recital.

owner.)
(g) A recital may be introduced thus: "Whereas, the said (lessors) are seized of, or entitled in fee simple to, the messuage, &c., hereinafter mentioned, and hereby intended to be demised in equal shares as tenants in common, and they have agreed to grant to the said (lessee) a lease thereof, upon the terms and in manner hereinafter expressed.

(A) Or thus only: "They, the said A. B. and C. D., do, and each of them doth, demise," &c.

during, and unto the full end and term of seven years, to be computed from the —— day of, &c., from thence next ensuing, and fully to be complete and ended, free from all deductions whatsoever, (except the land tax,) yielding and paying,(i) First redtherefore, yearly and every year, during the said dendum. term, unto the said A. B., his heirs and assigns, the rent or sum of £---, being one moiety or equal half part of the said rent or sum of £----, and Second redalso yielding and paying unto the said C. D., his dendum. heirs and assigns, the rent or sum of, £----, being the other remaining moiety of the said rent or sum of £. And the said (lessee,) for himself, his Covenants. heirs, executors, administrators, and assigns, doth covenant to and with each of them, the said A. B. and C.D., and their respective heirs and assigns, in manner following, that is to say, that he, the said (lessee,) his executors, &c., will pay to the said A. B., his heirs or assigns, the said sum of £----, so reserved to him, as aforesaid; and also will pay unto the said C. D., the said sum of £---, so reserved to him as aforesaid. And also will pay the taxes, and repair, &c. And also, that it shall and To enter may be lawful, to and for the said A. B. and C. and view. D., or either of them, their, or either of their, heirs, to enter and view the condition, &c. PRO- Proviso for VIDED ALWAYS, and it is hereby expressly declared re-entry. and agreed, by and between the said parties hereto, that if the said yearly rent shall remain, or be in arrear and unpaid, for twenty-one days after either of the said half yearly days of payment; or if the said (lessee) shall neglect to perform his said covenants, or either of them, it shall and may be lawful for the said A. B. and C. D., or either of them, their, or either

⁽i) The reservation may be generally, without saying to whom, (see p. 483,) thus: "Yielding and paying therefore, yearly and every year during the said term hereby granted, the yearly rent, &c., on, &c.;" (by this means all questions arising from an inaccurate form of reservation are avoided, and the rent will follow the reversion). It seems that the reservation of an entire rent is the best mode, as the tenants in common will have the option of bringing either joint or several actions. Leases by co-pareeners are made similar to leases by tenants in common.—See Bacon Abr., title Leases. (o)

Covenant for payment of rent.

of their, heirs or assigns, to re-enter, &c. And the said A. B., for himself, his heirs, &c., doth covenant, promise, and agree, to and with the said (lessee,) his executors, &c., that he, the said (lessee,) his, &c., paying the rent, to enjoy the said messuage, &c., as to one undivided moiety, or half part thereof only, for and during the term hereby granted, &c. (Add a like covenant from C. D.) In witness, &c.

(18.)

Lease of a House and Premises in Mortgage, made by Mortgagor and Mortgagee.(j)

Date.
Parties.

This indenture, made the —— day of, &c., between A. B., of, &c., (the mortgagee of the messuage, or tenement and premises, hereby demised, or intended so to be,) of the first part, C. D., of, &c., (the mortgagor of the same premises,) of the second part, and E.F., of, &c., (lessee,) of the third part,(k) witnesseth, that for and in consideration of the yearly rent and covenants hereinafter reserved, and which, on the part and behalf of the said E.F., his executors, administrators, and assigns, are, or ought to be, paid and performed, he, the said A. B., (at the request and by the direction and appointment of the said C. D., testified by his being made a party to, and sealing and delivering these presents.) And also he, the said C. D. Do, and each of them Doth, by

Witnessing

part.

Leases by mortgagee.

(j) Leases granted by a mortgagee, without the concurrence of the mortgagor, are void against the mortgagee, who may eject the lesser without notice.—See note to p. 93. Therefore, the concurrence of both the mortgagor and mortgagee is requisite in the lease.—See Pope and another v. Biggs, 9 B. & C. 245. Indeed, a mortgagor cannot enforce a contract for a lease unless he first obtain the confirmation of the mortgagee, or a reconveyance of the mortgaged premises.—Costigan v. Hastler, 2 Sch. & Lef. 160.

Recital.

(k) In the above precedent, the mortgagee was in possession; but when the lease is granted by mortgagor, with the consent merely of the mortgagee, the following recital may be added: "Whereas, the said (lessor) but contracted and agreed with the said (lessoe), for a lease of the messuage, &c., hereinafter particularly mentioned and described for the term of years, from, &c., at the yearly rent of £——, payable as hereinafter mentioned, and subject to the several covenants, provisoes, conditions, and agreements, hereinafter contained; and whereas, the said mortgagee bath consented to join in these presents in manner hereinafter mentioned. Now this indenture," &c.

these presents, demise, set, and let, unto the said E. F., his executors, administrators, and assigns, ALL that messuage, &c., situate, &c., together with Premises. all ways, paths, passages, waters, water-courses, General words. yards, gardens, lights, easements, privileges, profits, commodities, and appurtenances, whatsoever, to the said messuage or tenement, and premises hereby demised, belonging, or in anywise appertaining, or usually held, possessed, occupied, or enjoyed, as part, parcel, or member thereof. To HAVE Habendum. AND TO HOLD the said messuage or tenement, and premises hereby demised, and every part and parcel thereof, with their, and every of their appurtenances, unto the said E. F., his executors, administrators, and assigns, from the —— day of —— now last past, for and during, and unto the full end and term of —, from thence next ensuing, and fully to be complete and ended; yielding and paying, (1) there-to mortfore, yearly and every year, during such part of the sage. said term hereby demised, as the said A. B. shall continue mortgagee of the said premises, unto the said A. B., his executors, administrators, and assigns, the yearly rent or sum of £---, of lawful money of Great Britain, by four even and equal quarterly payments, as hereinafter is more particularly mentioned, (being the annual interest upon the mortgaged debt secured to the said C. D,) and after payment of the said money due on the said mortgage, (m) yielding and paying unto the said Reddendum

(I) If the mortgage is by demise, the reservation and covenants should Reservation. be, "To and with the mortgagee, his executors, administrators, and assigns."

(m) The reservation of the whole rent may be (the mostgaged having the Reddendum legal estate) thus: "Yielding and paying therefore yearly, and every year, of the whole during the said term hereby granted, unto the said (mortgagee), his, &c., (the rent. rent.) subject to such equity of redemption as the said demised premises are now subject to such equity of redemption as the said demised premises are now subject or liable to, and subject also to the proviso or agreement contained in respect to the intermediate payment of the same rent, until such notice as hereinafter mentioned; such yearly rent of, &c., to be paid and payable to the said (mortgagee), his heirs and assigns, free from taxes, and without any other deduction, by equal half-yearly payments, on, &c., the first payment," &c. Then add a proviso that the rent shall be paid to the Proviso. owner until notice by mortgagee, thus: "Provided always, and it is hereby agreed and declared, by and between the said parties hereto, that in the agreed and declared, by and between the said parties hereto, that in the mean time, and until the said (mortgagee), his, &c., shall give to the said (lessee), his executors, &c., or leave at the said hereby demised premises,

notice in writing requiring the said (lessee), his executors, &c., to pay the

to mortgagor. C. D., his executors, administrators, and assigns, yearly and every year, during the remainder of the said term hereby demised, the said yearly rent or sum of £——; the said yearly rent to be paid and payable on the four most usual days of payment of rent in the year, (that is to say,) the, &c., by even and equal portions, the first payment thereof to begin and be made on the —— day of ——, now next ensuing, the day of the date of these presents, clear of the land tax, and of all other deductions whatsoever. And the said E.F., &c., doth covenant, &c., to and with the said A. B., his executors, administrators, and assigns, as a separate covenant, by these presents,

Covenant for payment of rent.

As to the covenants by a mort-gagor.

Power of distress to mortgagor.

said rent hereby reserved to him the said (mortgager), his, &c., the said yearly rent of, &c., shall be paid to the said (mortgagor), his heirs and assigns." It seems where the legal estate is in the mortgagee, the covenants, if entered into with the mortgagor, do not run with the land, being covenants in gross, and will not bind the grantee of the reversion; it is, therefore, recommended, that the lessee's covenants should be entered into with the mortgagee, as the owner for the time being of the legal estate; as, upon the reconveyance of the estate, the right to maintain an action will pass as incident to the reversion.—(See the case of Russel v. Stokes, where A. being possessed of a term of years conveys it by way of mortgage, and then joins with the mortgages in a lease for a shorter term, according to their respective estates and interests; and the lessee covenants with the mortgagor, and his assigns, to pay the rent and keep premises in repair. During the lease the term, with all the estate and interest of the mortgagor and mortgages, becomes vested in the assignees of the reversion; yet the mortgagor may afterwards maintain an action of covenant against the lessee, the covenant being in gross.—I H. B. 562. 3 T. R. 678. And it appears the assignee of the mortgagee cannot maintain an action for the breach of these covenants, because they are collateral to his grantor's interest in the land, and, therefore, do not run with it.—Webb v. Russell, 3 T. R. 393.) An express power of distress may be given to the mortgagor, (the legal reversion being in the mortgage by virtue of the mortgage in fee,) and may follow thus: "And if at any time or times previously to such notice being given or left as aforesaid, the said yearly rent of, &c., or any part thereof, shall be unpaid by the space of twenty days after the respective days and times whereon the same ought to be paid as aforesaid; then and in such case, and so often as the same shall happen, (although no lawful demand shall have been made thereof,) it shall and may be lawful for the said (mortgagor), his heirs and assigns, to enter into, and distrain upon, the hereditaments and heirs and assigns, to enter into, and distrain upon, the hereditaments and premises hereby demised, for the said yearly rent, or so much thereof as shall be then in arrear; and the distress and distresses then and there made to take, lead, carry away, and impound, and in pound, to detain and keep, and in due time afterwards sell and dispose of, or otherwise act therein, according to law, to the intent that, by the ways and means aforesaid, the said (mortgagor), his heirs and assigns, shall and may be fully reid and actisfied the average of the said and actisfied the said and actisfied the average of the said and actisfied the said actisfied th paid and satisfied the arrears of the said rent; and also, the costs, charges, and expenses, which shall be sustained or incurred in consequence of any such distress or distresses."

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in manner and form following, (that is to say,) that he, the said E.F., his, &c., will pay, or cause to be paid, unto the said A.B., his executors, administrators, and assigns, so long as he shall continue mortgagee of the said premises, the said yearly rent or sum of £---- before reserved, and after payment of the principle and interest due on the said mortgage will well and truly pay, or cause to be paid, unto the said A. B., his executors, administrators and assigns, the said yearly rent or sum of £----, on the days and times hereinbefore limited and appointed for payment thereof, free and clear, of and from, the land tax, and all, and all manner of rates, taxes, assessments, charges, impositions, parliamentary or other outgoings whatsoever, according to the reservation aforesaid, and the true intent and meaning of these presents; AND also that he, the said E.F., his To repair. executors, administrators, and assigns, or some, or one of them, shall and will, from time to time, and at all times hereafter, during the continuance of this present demise, at his and their own proper costs and charges, when, where, and as aften, as need or occasion shall be or require, well and sufficiently repair, &c., and in such repair, yield up, &c., (see p. 490). And that it shall and may be lawful, Lessor to enter and to and for the said A. B. and C. D., or either of view. them, their, or either of their, executors, administrators, or assigns; and also to and for the original and other landlord of the said premises, with workmen, or others, or without, twice or oftener in every year, during the continuance of this present demise, at his and their wills and pleasures, at convenient times in the daytime, to enter, &c., to see the state and condition, &c., and to give notice, &c., and for the (lessee) to repair accordingly, (see p. 497). PROVIDED ALWAYS, that if it shall happen, &c., that Proviso for the said yearly rent shall be behind, &c., (being re-entry. lawfully demanded,) that then, &c., it shall be lawful for the said A. B., his executors, administrators, or assigns, so long as he shall continue mortgagee of the said premises, and for the said C.D., his executors,

administrators, or assigns, after he shall have paid off and satisfied the same, into the said messnage, or tenement and premises, with the appurtenances hereby demised, or into any part or parcel thereof, in the name of the whole to re-enter, and the same to have again, repossess, and enjoy, as this and their first and former estate, anything herein contained to the contrary thereof in anywise notwithstanding. Covenant for quiet enjoyment on payment of the yearly rent, without any interruption by the said A. B. and C. D., or either of them, or either of their executors, administrators, or assigns, or any other person, &c. In witness, &c.

For quiet enjoyment

(19.)

Lease of a House in London, by a Mortgagee, having a Power of leasing in the Mortgage Deed, and containing Covenants by Lessee, as to repairing party Walls, and for Insurance.

Parties.

Testatum.

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Operative part

Exception

Mortgagee

in fee.

(n) Here may be added, "Mortgages in fee of the messuage, bereditaments, and premises, by these presents demised, or intended so to be, under and by virtue of a certain indenture of release or mortgage dated,

By virtue of a power reserved in a &c., and made between, &c. (as the case may be).

(o) Or thus: "He, the said A. B., in pursuance and by virtue of the power and authority contained in the indenture of release hereinbefore referred to, and of every other power or authority enabling him in this behalf, doth grant and demise," &c.

and always reserved out of this demise, the free as to a free passage and running of water and soil from the running of other houses and building of, &c., and his tenants, water from the and through the channels and drains of the said the adjoinby and through the channels and drains of the said ing houses hereby demised premises, the tenant or tenants of of the landsuch other houses and building on request, paying his or their share and proportion of the charges of cleansing and repairing the same, as need shall require; TO HAVE AND TO HOLD the said messuage Habendum. or tenement, and all other the premises hereby demised, with their, and every of their, appurtenances, (except as aforesaid,) unto the said C. D., his executors, administrators, and assigns, from the - day of, &c., next ensuing, for, and during, and unto the full end and term of fourteen years, from thence next ensuing, and fully to be complete and ended; yielding and paying, yearly and every Roddendum year during the said term, unto the said A. B., his &c., the yearly rent or sum of £---, of lawful money of Great Britain, upon the four usual days for payment of rent in the year; that is to say, the -day of, &c., by four equal portions, the first payment whereof to begin and be made on the day of, &c., next; AND the said C. D., for himself, Covenant for his heirs, executors, administrators, and assigns, rent. doth covenant, promise, and agree, to and with the said A. B., his, &c., and in manner following, (that is to say,) that he, the said C.D., his executors, administrators, and assigns, shall and will, from time to time during the said term, well and truly pay, or cause to be paid, unto the said A.B., his executors, administrators, or assigns, the said yearly rent hereby reserved, at or on the days and times hereinbefore appointed for payment thereof, in net money, and clear of all deductions for or in respect of any rates, taxes, duties, or assessments whatsoever, parliamentary, parochial, or otherwise. AND And for lesalso shall and will, during the said term, bear, pay, see to pay and discharge, the land tax, sewers rates, and all other taxes, rates, duties, and assessments whatsoever, whether parliamentary, parochial, or other-

wise, now, or which at any time or times during

As to repairing party walls.

Insurance.

Repairs.

And in repair to yield up with fixtures, &c.

the said term, shall be taxed, rated, charged, or assessed, on the said premises hereby demised, or any part thereof, or upon the landlord or tenant in respect thereof, or of the rent hereby reserved; AND also shall and will, during the said term, when need shall require, bear, pay, and allow, a reasonable share with the other tenants, of supporting, repairing, cleansing, amending, and rebuilding all party walls, gutters, sewers, drains, and cesspools, belonging to the said premises. And also shall and will, at all times during the said term, keep the said premises insured(p) from loss or damage by fire. in the sum of £——, at the least, in the —— office, or such other public office for insurance in London or Westminster, as the said A. B., his, &c., shall from time to time appoint, and when thereunto required, produce the current year's receipts for such insurance to the said A. B., his, &c., his, her, or their steward or agent. And also that the said C. D., his executors, administrators, or assigns, shall and will, at his and their own costs, at all times during the said term, when need shall require, well and sufficiently repair, (q) support, amend, pave, paint, cleanse, and keep the said premises, with the appurtenances, with all manner of needful and necessary reparations, cleansings, and amendments whatsoever; and the said premises so being well and sufficiently repaired, supported, amended, paved, painted, cleansed, and kept together, with all the doors, wainscot, shelves, dressers, drawers, locks, keys, bolts, bars, staples, hinges, hearths, chimnevpieces, mantle-pieces, chimney-jambs, foot-paces, slabs, coverings, window-sashes, shutters, partitions, sinks, pumps, pipes, water-closets, rails, and all other things which now are, or which at any time during the said term shall be fixed or fastened to, or set up in or upon the said premises, or any part thereof, or belonging thereto, shall and will, at the

⁽p) See p. 291; and notes to p. 292; and see p. 491, and note. (q) See p. 490, and notes; and see p. 521, and notes.

the expiration, or other sooner determination of the said term which shall first happen, peaceably yield up to the said A. B., his, &c., together with the several fixtures and things mentioned and described in the schedule hereunder written, in the same plight and condition as they are now in, (reasonable use and wear thereof in the meantime, and casualties by fire only, excepted). AND, moreover, that Covenant it shall be lawful for the said A. B., his, &c., with for lessor to workmen and others employed by him, her, or view, and them, twice in every year, or oftener, during the notice of the said term in the daytime, to enter into the said want of repremises, or any part thereof, to search and see the decays and wants of reparation and amendment in and about the same; and the decays, defects, and wants of reparation and amendment there found, to give or leave notice in writing, on, or at, the said premises, for the amendment thereof; and that For lessee to the said C. D., his executors, administrators, and repair on reassigns, shall and will, within three months next notice. after every such notice, well and sufficiently repair, amend, and make good, all such decays, defects, and wants of reparation and amendment whereof notice shall have been so given or left; and all other decays, defects, and wants of reparation and amendment whatsoever. And also, that no erection Lessee not or building whatsoever, shall, at any time during to erect buildings the said term, be erected in or over the yard or over yard. ground behind, or belonging to, or the area of, the said messuage or tenement hereby demised, or in, or over, any part thereof, respectively. And also, Not to make that no alteration or addition shall, at any time any alteraduring the said term, be made in or to the height, front, sides, roofs, walls, timber, or elevation of the said messuage or tenement, and premises hereby demised, without the consent, in writing, of the said A.B., his, &c., or his, her, or their steward or agent for the time being. And also, that no act, matter, or Lessee not thing, whatsoever, shall, at any time during the said to do any act term, be done in or upon the said premises, or any landlord, nor part thereof, which shall, or may be, or grow to the to obstruct

window lights.

on offensive

trades.

Nor auctions.

Nor for a police office.

Proviso for re-entry in default of payment of rent, &c.

annoyance, nuisance, grievance, damage, or disturbance of the said A. B., his, &c., or whereby the window or lights belonging to any messuage, tenement, or building, being the estate of the said A. B., his, &c., shall or may be in any manner stopped or Not to carry Obstructed. And also, that the trades or businesses of a(r) brewer, baker, sugar baker, vintner, victualler, butcher, tripe-seller, poulterer, fishmonger, cheesemonger, fruiterer, herb-seller, coffeehousekeeper, distiller, dyer, brazier, smith, tinman, farrier, dealer in old iron or second-hand clothes, or second-hand boots and shoes, pipe-burner, melting or other tallow-chandler, soap-boiler, blackingmaker, working hatter, or working cooper, shall not at any time or times during the said term, be carried on in or upon the said premises. that no auction or public sales of household goods, or other things, shall at any time or times during the said term, be had or made in or upon the said premises, or any part thereof. And also, that the said premises shall not be used or occupied at any time or times during the said term, as or for a police office, or as or for a shop for the sale of coals, potatoes, or any provisions whatsoever, or as a brothel. PROVIDED ALWAYS,(s) and it is hereby agreed, that if the yearly rent hereby reserved, or any part thereof, shall be behind for the space of fifteen days next after any of the days of payment whereon the same ought to have been paid as aforesaid; or on breach, neglect, non-performance, or non-observance of any of the covenants, stipulations, restrictions, and agreements, hereinbefore contained, then, and from thenceforth, and in either of such cases, it shall be lawful for the said A. B., into the said premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, repossess, and enjoy, as if this lease had never been made.

able enjoy-

(r) See p. 494, and note.
 (s) See p. 497, and notes; and see p. 523, note.

AND the said A.B., for himself, his [heirs,] executors,

administrators, and assigns, doth covenant and agree

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with the said C. D., his executors, administrators, the premiand assigns, that he and they paying the rent hereby reserved, and performing and observing the covenants, stipulations, restrictions, and agreements, hereinbefore contained, shall and may peaceably hold and enjoy the said premises, hereby demised, during the said term, without the lawful let, suit, forcible eviction, or interruption of the said A. B., his, &c., or of any person or persons lawfully claiming, or to claim, by, from, or under him, them, or any of them. In witness, &c.

(20.)

Lease of a House and Stable for twenty-one Years, with a Proviso for the Determination of the Lease of the House at one Period, and the Stable at another, at the Option of the Parties, on Notice to be given for that Purpose.

THIS indenture, made, &c., between A. B., of,&c., Parties. of the one part, and C.D., of, &c., of the other part, WITNESSETH, &c., (as usual,) he, the said A. B., doth, &c., unto the said C.D., his executors, &c., ALL Premises. that messuage, &c., AND also all that stable, &c., together with, &c., TO HAVE AND TO HOLD the said Habendum. messuage or dwelling house, warehouse, &c., unto, &c., for the full term of twenty-one years from the proviso hereinaster contained, for determining the said term, by notice, at the end of the first seven years of the said term, as to the said messuage or dwelling house, and at the end of the first fourteen years of the said term as to the said stable,) yield-General reing and paying, &c., (here insert the usual reddendum as to the yearly rent for the whole premises: then add,) but in case the same term hereby granted shall be determined by notice, under or by virtue of the proviso for that purpose hereinafter contained, either as to the said messuage or dwelling house, or the said stable only; then yielding and paying Reservation

as to the respective parts if determined by the parties.

thenceforth during the residue which shall be then unexpired of the said term hereby granted, if the same shall be so determined as to the said messuage only, the rent of £20, of lawful current money, for, or in respect of, the said stable; or if the said term shall be so determined as to the said stable only, then the yearly rent of £60, for, or in respect of the said messuage or dwelling house, with the appurtenances; the said yearly rent of £20 and £60. as the case may be, to be paid by even portions, half yearly, on the days, and in the manner hereinbefore appointed for payment of the said yearly rent of £---, (the original rent for both,) and the first of such half yearly payments to be made on such of the said days as shall happen next after the said term shall be so determined by notice as aforesaid. And the said (lessee), for himself, his, &c., doth covenant,&c., to and with the said (lessor), his, &c., that he, the said (lessee), his, &c., will, during the continuance of the term hereby granted, as to the whole or part of the said demised premises, duly pay, or cause to be paid, unto the said (lessor), his, &c., such of the said yearly rent hereby reserved, as shall for the time being be payable by virtue of the reservation hereinbefore contained, on the days and times, and in manner hereinbefore appointed, for payment thereof, according to the true intent and meaning of these presents. Add a covenant to repair, see p. 490 and 521, and in such repair to yield and deliver up the same, or any part thereof, "in respect of which the said term hereby granted shall be determined, as hereinafter mentioned, in good tenantable repair, unto the said (lessor), his, &c., and also, with power to enter to view the state and condition of the premises, (see p. 292 and 521,) and add the covenant by lessor for repairing the outside of premises, if agreed upon, and other covenants on his part, in the usual way. Then add the proviso for the determination, thus: "PROVIDED always, and it is hereby declared and agreed, by and between the said parties hereto, that it shall be

Covenants to repair,

&c.

Covenant for payment

of rent.

Proviso as to the sooner determination of the

lawful for the said A. B., his heirs or assigns, or for lease, on the said C. D., his executors, administrators, or either party. assigns, to determine and put an end to this present demise, and the term hereby granted in respect of As to the the messuage or dwelling house and premises house. hereinbefore demised, at the end of the first seven years of the said term, upon delivery to the other of them, his executors, administrators, or assigns, or his heirs or assigns, as the case may be, six calendar months' previous notice in writing, or leaving the same at his or their usual place or places of abode. And also to determine and put an end to As to the this present demise, and the term hereby granted, stable. in respect of the stable and its premises, secondly hereinbefore demised, at the end of the fourteenth year of the said term hereby granted, upon giving six calendar months' previous notice as aforesaid; AND that in either of the said cases, this present indenture, and every clause, matter, or thing herein contained, so far as respects that part of the said demised premises, in respect of which such notice shall have been given as aforesaid, shall, upon the expiration of the said notice, and performance of the covenants hereinbefore contained, relative thereto, on the part of the person or persons giving the said notice, cease, determine, and be void, anything hereinbefore contained to the contrary notwithstanding." In witness, &c.

(21.)

Underlease, with Provisions as to indemnifying the Lessee,(t) and as to Renewal.

This indenture, made the —— day of, &c., BR- Parties. TWEEN A. B., of, &c., of the one part, and C.D., of, &c., of the other part, WITNESSETH, that in consi- Testatum.

⁽t) Where the instrument operates as a transfer of the whole residue of Underlease. the term, though the rent is reserved to the grantor, and not to the original lessor, it is an assignment, and not an underlease.—Palmer v. Edwards, Doug. 178, n. See also Parmenter v. Webber, 6 Taunt. 593. S. C. J. B. Moore, 666. [In this case on express power of distress should be limited to the assignor, which would by virtue of the same secure it, eithough no reversion is in the person assigning.]

Operative part.

lease.

for the fractional part

Covenant for payment of rent, &c.

deration of the rent, &c., (as usual,) he, the said A. B., DOTH grant, demise, and lease, unto the said C. D., all, &c., and which same premises are now held by the said A. B., under, or by virtue of a lease Reference to granted to him by R. S., of, &c., by indenture, dated, &c., for a term of twenty-one years from the — day of —— last, (and which indenture contained a covenant on the part of the said R. S., to grant a renewed lease at the expiration of the fourteenth year of the said term, for a like term of twenty-one years, and with the like covenant for renewal as therein is contained); TOGETHER with all Habendum. paths, &c., (add the general words,) To HAVE AND TO HOLD the said piece or parcel of ground, and also the premises, &c., hereby demised, or intended so to be, with the appurtenances, unto the said C. D., his executors, administrators, and assigns, from, &c., last past, for the full term of ten years, and three quarters of another year wanting two Reddendum days, yielding and paying, therefore, yearly and every year, during the said term hereby granted, except the last three quarters of a year wanting two days, unto the said C. D., his executors, administrators, and assigns, the rent of, &c., clear of all deductions, the first of such, &c., to be Reddendum paid on, &c. And also yielding and paying, for the last three quarters of a year wanting two days of of the year. the said term, the rent or sum of £---, &c., to be payable clear, &c., on the days and in manner hereinafter mentioned, that is to say, the sum of £by two equal payments, on, &c., next preceding the expiration of the said term, and the remaining sum of, &c., on the last day but one of the said term hereby granted. [Add a covenant by C.D., with A. B., for payment of the "yearly and other rents hereby reserved, at the times hereinbefore appointed for payment thereof respectively, clear of all deductions as aforesaid," and taxes; then may follow any covenant as to buildings; and with the usual covenants by (lessee) to keep the buildings in repair, and leave the same repaired; and if agreed upon, a covenant for insurance, and power for (lessor) to enter, and examine repairs, and for (lessee) to make such repairs accordingly.] AND also, that in case the Topay a said C. D., his executors, administrators, and as-fine to lessor on assignsigns, shall at any time or times hereafter, be desir- ing or unous of making any assignment or assignments, under-lease or under-leases, or other disposition of the said premises, or any part or parts thereof, for the whole or any part of the said term hereby granted, then the said C. D., his executors, administrators, or assigns, shall previously to the making or executing any, and every assignment to be at any time, or from time to time, made of the whole of the said premises, for the whole of the said term hereby granted, pay, or cause to be paid, to the said A. B., his executors, administrators, or assigns, a sum equal to a moiety of the amount of one year's rent hereby reserved, by way of fine; and shall, previously to the execution of any and every assignment to be at any time, or from time to time, made of the whole, or any part of the said term hereby granted, pay, or cause to be paid, to the said A. B. his executors, administrators, or assigns, a sum equal to the moiety of the amount of one year's rent hereby reserved, by way of fine, and shall, previously to the making or executing any and every assignment, to be at any time, or from time to time, made of any part less than the whole of the said premises, for the whole of the said term hereby granted, pay, or cause to be paid, to the said A.B., his executors, administrators, or assigns, the sum of £5 of lawful money of Great Britain, by way of fine, and shall, previously to the making or executing of any and every under-lease, or other disposition, to be at any time, or from time to time, made of the whole or any part of the said premises, for any part less than the whole of the said term hereby granted, pay, or cause to be paid unto the said A. B. his executors, Fine to be in administrators, or assigns, a sum equal to one moiety to rent. of one year's rent intended to be reserved on such under-lease, or disposition, if such rent shall exceed

In case of dispute the same to be settled by the original landlord.

the sum of £10; but if such rent shall be nominal only, or shall be less than the yearly rent of £10, then the sum of £5, by way of fine. And that in case any question, controversy, or dispute, shall arise during the said term, between the said C. D., his executors, administrators, or assigns, or any other tenant or tenants, undertenant or undertenants, of the said (original landlords), his heirs or assigns, occupying premises near, or adjoining to the said premises hereby demised, concerning any light, watercourse, or other matter or thing relating to the said demised premises, then, and so often as the same shall happen, the said C. D., his executors, administrators, or assigns, shall submit to, and abide by, such award or determination as the said (original lessor), his heirs or assigns, shall make or declare, in writing, concerning any such question, controversy, or dispute. Add a power of entry and distress on behalf of the said A.B., for recovery of rent, and a covenant by the said A. B. to perform the covenants in the original lease, and to indemnify lessee therefrom; (u) and add a covenant for Covenant by quiet enjoyment.] And further, that he, the said to cause the A. B., his executors, administrators, or assigns, and all and every person and persons whosoever, law-

the saidA.B. original lease to be

Power of distress on lessor's other property by way of further indemnity.

(u) Here may be added a power of distress on lessor's other property by way of further indemnity, thus: "And also, that in case the said, (lessee), his executors, administrators, or assigns, shall at any time here after, uuring the continuance of this demise, pay or expend any sum or sums of money, costs, and expenses, for the purposes and in manner aforesaid, exceeding in amount the rent which shall for the time being happen to be then due from him to the said (lessor), his executors, administrators, or assigns, it shall be lawful for the said (lessee), his executors, administrators, and assigns, to enter into and distrain upon all or any part of the messuage, tenements, lands and hereditaments, demised to him, the said (lessor), in and by the said indenture of lease of the, &c., hereinbefore referred to, and not comprised in the present under-lease, for all such and every sum or sums of money, costs, and expenses, as the said (lesser), his executors, administrators, or assigns, shall have so paid or incurred as aforesaid; and the distress and distresses then and there made to take, lead, drive, carry away, and impound, and in pound, to detain and keep, and in due time afterwards to sell and dispose of, or otherwise to act therein, according to law, in the same manner as in the case of distresses by landlords for rent reserved upon leases for years; to the intent that the said (lessee), his executors, administrators, or assigns, may be fully satisfied all and every the sum and sums of money, costs, and expenses, they or any of them shall have paid or incurred by any of the means aforesaid, as well as the expenses incident to such distress or distresses.

fully claiming any legal or equitable estate, right or renewed by interest, by, from, or under him, shall and will, lessor. upon the expiration of the fourteenth year of the term of twenty-one years, granted by the said hereinbefore mentioned indenture of, &c., cause and procure a new lease, of all and singular the premises comprised in the said indenture of lease, to be granted to him or them by the (original lessor,) his heirs or assigns, in pursuance of his covenant hereinbefore mentioned, for a lease of twenty-one years thenceforth, at the like rent, and with the like covenants and agreements, including the said covenant for renewal, (or, "except the said covenant for renewal," as the case may be,) as are contained in the said indenture of, &c. And also, that he, the And that said A. B., his executors, administrators, and as-upon such renewal he signs, and all and every person and persons whose-will grant ever, lawfully claiming any legal or equitable estate, an underright, or interest, by, from, or under, him or them, shall and will upon such renewal by the said (original lessor), his heirs or assigns, grant and execute to the said C. D., his executors, administrators, or assigns, or unto such other person or persons as he or they shall direct or appoint, an under-lease or under-leases of all and singular the premises hereby intended to be demised, for the whole of the term created by such new or further demise as aforesaid, (except the two last days thereof,) under and subject to such and the same rent, covenants, provisoes, and agreements, as in these presents are reserved and contained, including this present covenant, for, "except this present covenant," as the case may be,] he, the said C. D., his executors, Lessee payadministrators, and assigns, on his and their part ing a proporpaying a proportionate part of the fines, fees, and of the fine. other expenses, attending such renewal, by the said A. B., his executors, administrators, or assigns, with all the expenses of such under-lease or under-leases; which proportionate part it is hereby agreed shall be fixed and determined by the improved value to be from time to time set by the (original lessor), To be fixed

the renewed values,

according to upon the lands and tenements to be comprised in every such renewed lease; and the amount of the payment so to be made by the said C. D., his executors, administrators, or assigns, upon every such renewal, to be settled and adjusted in case of dispute concerning the same, by reference to the person who, for the time being, shall be the surveyor or agent of the said (original lessor), his heirs or assigns. (Here a proviso may be added for lessee to obtain directly from the original lessor a new lease, (v) and a covenant by (lessor) to produce the original lease.)(w) In witness, &c.

(22.)

Renewed Lease for Lives.

Parties.

This indenture made the —— day of, &c., BE-TWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part. (Recite the former lease, with the covenant for renewal.)(x) And

Recital

Provise empowering lesses to apply directly to lesser for a new lesse. (v) The provise may be thus: "Provided always, and it is hereby agreed and declared, between and by the said parties hereto, that it shell be lawful for the said (lessee), his executors, administrators, or assigns, at any time hereafter, to apply for, and procure from, the said (original lessor), his heirs or assigns, an original lesse, to be granted unto him, the said (lessee), his executors, administrators, and assigns, of all and singular the premises hereby demised, or intended so to be, for his and their own use and benefit; and that in such case the said (lessor), his executors, administrators, or assigns, shall and will, at the costs and charges of the said (lesses), his executors, administrators, or assigns, join and concur in making such surrender of the said premises hereby demised as he, the said (lessee), his executors, administrators, and assigns, shall require; and that upon such lease being granted, the covenants and agreements bereisbefore contained on the part of the said (lessee), to pay a proportionate part of the fines and expenses in every such renewal shall cease, determine, and be absolutely void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

Recital.

er) See p. 303. (w) See p. 333. (x) Thus: "Whereas, by an indenture dated, &c., (with livery of seizin thereon according to the form and effect thereof,) and made between, &c., the said A. B. demised unto the said C. D, his heirs and assigns, the messuage, or tenement and premises, hereinafter described, for the natural suage, or tenement and premises, persuases under a survivor of them, lives of, &c., and the lives and life of the survivors and survivor of them, at and under the yearly rent of, &c., payable quarterly; and in the se indenture of lease was contained a covenant on the part of the said (lessor), his heirs and assigns, that upon the decease of either of them, the said, &c., he, the said A B., his heirs or assigns, would, at the request of the said (lessee), his heirs or assigns, and upon the surrender of the said lease, and the payment of the said or assigns, and upon the said (lessee), his heirs or assigns, and upon the said (lessee), his heirs or assigns, at and upder the same vearly rank, and with and sabiest to or assigns, at and under the same yearly rent, and with and subject to

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;

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WHEREAS, the said L. M., one of the (celles que Rental. vies) named in the said indenture of lease, departed this life on or about the —— day of, &c., last past, and the said C. D. hath accordingly called upon the said A. B., to grant him a renewed lease in pursuance of his said covenant for the life of P.Q., now of the age of eighteen years, or thereabouts, in the room of the said L. M. And whereas, by Recital of a deed poll under the hand and seal of the said lease. C. D., bearing even date herewith, the said C. D. hath surrendered and yielded up unto the said A. B., and his heirs, all and singular the said messuage and premises to the intent that the said A. B. may grant a new lease to him thereof, during the lives of the surviving celles que vies, and the said P. Q. respectively, as hereinaster is mentioned. Now this indenture witnesseth, that in pursu-Testatum. ance of the said recited covenant, and of the said deed poll or surrender, and also in consideration of the sum of £---, of lawful money of the said united kingdom, to the said A. B., in hand, paid by the said C. D., at or immediately before the execution of these presents, the receipt whereof the said A. B. doth hereby acknowledge, and from the same and every part thereof doth hereby acquit, release, and discharge, the said C. D., his heirs, executors, administrators, and assigns, he, the said A. B., DOTH hereby grant, demise, and lease, unto the said C.D., his heirs and assigns, ALL that messuage, &c. HAVE AND TO HOLD the said messuage, &c., and all and singular other the premises hereby demised, unto the said C. D., his heirs and assigns, for if it

such and the same covenants, provisoes, and agreements, (including the covenant now in recital,) as were reserved and contained in the said recited lease. [The period and terms for and upon which the renewal is to be granted should be defined with precision, as disputes often arise between the lessor and lessee, whether upon the true construction of the covenant to renew in a lease for lives the lessee is obliged to renew at the dropping of each life, or has the liberty of waiting until the expiration of all the lives, the leaning of the courts being against the lessee particularly in perpetual renewal. (See p. 532.) The right of renewal is forfeited by the breaches of the tenant, (Baynham v. Guy's Hospital, 3 Ves. jun. 296; and see Rubery v. Jervoise, 1 D. & E. 229,) and no relief will be afforded in equity.—7 Kast, 237; and see Bayley v. Corporation of Leominster, 3 B. C. & C., 529.]

be a lease for years, determinable on lives, say, "his executors, administrators, or assigns,"] from

Reddendum as to the fractional pert.

Covenant for renewal on the dropping of a

the date of these presents, during the lives of the said, &c., and the lives and life of the survivors and survivor(y) of them, for for and during the term of, Reddendum &c., if, &c., shall so long live]; yielding and paying, therefore, yearly and every year during the said demise, unto the said A. B., his heirs assigns, the yearly rent or sum of, &c., by equal quarterly payments, on the —— day of, &c., in every year, free and clear of and from all present and future taxes, rates, assessments, deductions, and abatements whatsoever; the first payment thereof to be made on, &c., next ensuing, if the said, &c., or any or either of them, shall be then living, and yielding and paying for any fractional period of a quarter that may happen to elapse between the commencement of this present demise, or any one of the days of payment hereinbefore named, and the decease of the last survivor of them, the said celles que vies, a proportion or ratable share of the said yearly rent, according to the length or duration of such period. And the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant, grant, and agree, with and to the said C. D., his, &c., that if he, the said C. D., his heirs or assigns, (or executors, &c.,) be desirous of taking a further or renewed lease in the said demised premises for another life, and shall, as hereinafter more particularly mentioned, within the space of three calendar months next after such decease, give notice in writing of such desire unto the said A. B., his heirs or assigns, and shall nominate any person in the stead of the cestui que vie, who shall have so departed this life, he, the said A.B., his heirs or assigns, shall and will at the request, and at the costs and charges of the said C.D., his heirs or assigns, (or his executors, administrators, or assigns,)

Survivors.

⁽y) The words "survivors and survivor of them," prevents the determination of the lease, in case of either of the lives dying, otherwise it would operate as a lease only for their concurrent lives.—See Brudnell's case, 5 Rep. 9.

and on the surrender of this present lease, such sur- Costs of render to be at the like costs and charges, and payment of the sum of £---, by way of fine or premium for such renewal, forthwith duly make and execute unto him, the said A. B., his heirs or assigns, (or his executors, administrators, and assigns,) a new and further lease of all and singular the premises hereinbefore demised, for and during the natural life of the person so to be nominated, and the lives of such of the said celles que vies hereinbefore named, as shall be then living, and of the survivors and survivor of them, at and under the same yearly rent, and with, and subject to, such and the same covenants, provisoes, and agreements, including this present covenant, (z) as are herein contained. And, For insert-FURTHER, that if within the said period of three ing additional lives. calendar months after the decease of any one of them, the said, &c., and before any renewed lease, or leases, shall have been granted of the said demised premises, by virtue of the covenants hereinbefore contained, or if any other or others of the said celles que vies, shall depart this life, then it shall be lawful for the said C. D., his heirs or assigns, (or his executors, &c.,) if he or they shall think proper, to add or insert another life or lives in the lease so to be granted as aforesaid, in room of the life or lives which shall so drop, he or they paying unto the said A. B., his heirs or assigns, within the said period of three calendar months after the dropping of the first life, the further sum of £---, in respect of the said life, or each of the said lives, as the case may be, which shall be so inserted in the said lease, it being the intention of the said parties, that the said C.D., his heirs or assigns, (or executors, administrators,

⁽z) In the case of Iggulden v. May, 7 East, 237, it was held that a covenant a new lease "with all covenants, grants, and articles, in this indenture contained," was satisfied by the tender of a new lease, containing all the former covenants, except the covenant for further renewal; therefore, the words in the text, "including this present covenant," will have the effect of making the covenant for renewal perpetual; but if it is intended that the renewed lease shall not contain a covenant for renewal, and in order to prevent any doubt, insert, instead of the above words, "Except this perpetual covenant."—See Tritton v. Foote, 2 Cox, 174. 2 Bro. Ch. Ca. 636.

Proviso in case of neglect to insure.

or assigns,) shall not be obliged, unless he or they shall think proper, provided he renews within the period aforesaid, to incur the expenses of a further or additional lease or leases, in respect of the said second or third lives dying as aforesaid. Provid-ED NEVERTHELESS, and it is hereby declared, that in case the said C. D., his heirs and assigns, (or his executors, administrators, or assigns,) shall neglect or refuse, within the space of three calendar months next after the decease of such one of them, the said, &c., as shall first die, to give unto the said A. B., his heirs or assigns, or leave for him, or them, at his or their dwelling, or respective dwellings, notice in writing, of his or their desire to renew the said lease, naming one or more person or persons in the room of him or them who shall have departed this life, or shall neglect to pay(a) such fine as aforesaid, forthwith after the expiration of such notice, or to execute a surrender of this present lease, or a counterpart of the said lease, so to be granted, at and under the rent, and with the covenants, provisoes, and agreements, hereinbefore contained, including the said covenant for renewal, according to the true intent and meaning of these presents, THEN and in such case all right and benefit of renewal, by virtue of the said covenant hereinbefore contained shall lapse and determine, as effectually as if the said covenant had not been inserted in this indenture, anything herein contained to the contrary thereof in anywise notwithstanding. And the said A. B. doth hereby make, constitute, and appoint, R. S., of, &c., (or if made a party to the deed, the said R. S.,) his true and lawful attorney, for him, and in his name, to enter into and upon all and singular the said hereditaments and premises hereby granted and enfeoffed, or intended so to be, with the appurtenances, or into or upon some part thereof in the name of the

Appointment of attorney to deliver possession.

Renewal.

(a) Where a leases neglects to renew within the time prescribed by the covenant, the right of renewal is gone, as well in leases for years as leases for lives.

whole; and after the said R. S. shall have entered into and upon the said hereditaments and premises in manner aforesaid, then, in the name of the said A. B., to give and deliver unto the said C. D., in his own person, or by his attorneys or attorney, hereafter for that purpose authorised, seizin of all and singular the same hereditaments and premises, or some part thereof in the name of the whole, (b) To HOLD unto the said C. D., his heirs and assigns, according to the form and effect of these presents; and the said A. B. hereby undertakes to ratify and confirm whatsoever his said attorney shall lawfully do, by virtue of these presents. [If the lessee appoints an attorney to receive seizin, add the clause to that effect, thus, -And the said C. D. Appointdoth, &c., to enter, &c., in the name of the said torney to re-C. D., and for him to take and receive seizin of all, new seizin. &c., from the said A. B., in his own person, or by his attorney or attorneys, hereinafter for that purpose authorised, TO HOLD, &c., and the said C. D. undertakes to ratify, &c. In witness, &c.(c)

(23.)

A Lease of different Premises for two separate Terms, with different Habendums and Reservations of Rent accordingly; with a Clause, empowering the Lessee to surrender up the Premises, at a certain Period of the Term, on Notice.(d)

This indenture, made the —— day of, &c. 1838, Parties. BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part, WITNESSETH, that for, and

(b) To a lease for life, livery of seizin is necessarily incident, as it passes Livery.

(d) The terms created by this lease, although having different com- Terms. mencements, end at the same period.

the freehold; but a lease for years passes only the right of possession, and is completed by the entry of the lessee.—Watk. Pr. 175. Prest. Conv. 145.

(c) The testimonium may be thus, if from a corporation: "In witness Testimowhereof to one part of these indentures remaining with the said (lessee), nium. the said (lessors) have set their common seal; and to the other part thereof, remaining with the said (lessors), the said (lessee) hath set his hand and seal the day and year first above written." (Livery of seizing must be endorsed on the decd.)

First description of parcels.

Second description of parcels.

General words.

First ha.; bendum.

Second habendum,

in consideration of the rents, &c., he, the said A.B., DOTH, by these presents, demise and lease unto the said C. D., his, &c., ALL that messuage or tenement, with the garden, coach-house, stable, and outhouse, thereunto belonging, and therewith now enjoyed as the same now are, in the tenure or occupation of the said A. B., situate, lying, and being in the parish of D. in the county of C. AND ALSO all that other messuage or tenement, and also all those several pieces or parcels of meadow or pasture land, formerly in one piece or parcel, and lately divided, commonly called or known by the name of, &c., containing, by estimation, fifteen acres or thereabouts, be the same more or less, situate, &c., which last mentioned messuage or tenement, and several pieces or parcels of meadow or pasture land, are also situate, lying, and being, in or near D. aforesaid, and now are in the tenure or occupation of R. S., his undertenants or assigns, with all ways, paths, passages, lights, easements, waters, water courses, profits, commodities, advantages and appurtenances whatsoever, to the said messuage or tenement, pieces or parcels of land and premises belonging, or in anywise appertaining, (except and always reserved,) forth and out of this present demise, unto the said A. B., his heirs and assigns, all timber trees, and pollard trees, now growing, and which during the term hereby granted shall grow, or be upon the said demised premises, or any part thereof, TO HAVE AND HOLD the said messuage or tenement, garden, coach-house, stable, outhouse, and premises above mentioned, to be in the occupation of the said A.B., unto him, the said C.D., his executors, administrators, and assigns, from the 25th day of March next ensuing, for and during, and unto the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended. And to have and to hold the said messuage or tenement, and the several pieces or parcels of meadow or pasture land and premises, secondly hereinbefore described, and now in the

occupation of the said R. S., unto the said C. D., his executors, administrators, and assigns, from the 29th day of September, which will be in the year of our Lord, 1841, for, and during, and unto the full end and term of seventeen years and a half, from thence next ensuing, and fully to be complete and ended. YIELDING AND PAYING for the said First redmessuage and tenement, garden, coach-house, dendum. stable, outhouse, and premises, firstly hereinbefore described and mentioned to be in the occupation of the said A. B., unto the said C. D., his heirs or assigns, for and during the first three years and a half of the said term of twentyone years, by these presents demised, the yearly rent or sum of £20, of lawful money of Great Britain, on the four most usual feasts, or days of payment of rent in the year; that is to say, the 24th day of June, the 29th day of September, the 25th day of December, and the 25th day of March, by even and equal portions, the first payment thereof to begin and be made on the 24th day of June next ensuing the date hereof. And ALSO YIELDING AND Second red-PAYING, for all the said hereby demised premises, unto dendum. the said A. B., his heirs or assigns, for and during the last seventeen years and a half of the said term of twenty-one years, the yearly rent or sum of £63, of like lawful money, on the four most usual feast days, or times of payment of rent aforesaid, by equal and even portions. And, &c., (add covenants. the usual covenants by tenant for payment of rent and taxes, to repair, &c.; and by landlord for quiet enjoyment, &c. See p. 488). In witness, &c.

(24.)Lease of Land for building.

THIS indenture, made the —— day of, &c., BE- Parties. TWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part, WITNESSETH, that for and Testatum. in consideration of the rents, covenants, and agreements, hereinaster reserved and contained, and by and 3 D 3

on the part and behalf of the said C. D., his executors, administrators, and assigns, to be paid, done, and performed; he, the said A. B., doth, by these presents, demise, lease, set, and to farm let, unto the said C. D., his executors, administrators, and assigns, ALL that piece or parcel of ground, Parcels. situate and being, &c., containing, &c., (e) together with the messuage or tenement, and other the erections and buildings thereon, which the said C. D. shall have full liberty to pull down, and to take to and for his own use, which said piece or parcel of ground adjoins, &c., and is more particularly delineated and described in the plan or ground plot thereof, drawn in the margin of these presents; together with General all erections, and buildings to be erected and built thereon, and all ways, paths, passages, drains, waters, water courses, easements, profits, commodities, and appurtenances whatsoever, belonging, and which shall belong, to the said hereby demised Habendum. premises, or any part or parcel thereof. To HAVE AND TO HOLD the said piece or parcel of ground, messuages or tenements, erections, buildings, and premises hereby demised, or intended so to be, with their, and every of their appurtenances, unto the said C. D., his executors, administrators, and assigns, from the —— day of ——, last past, for and during, unto the full end and term of —— years from thence next ensuing, and fully to be complete Reddendum and ended. Yielding and paying, therefore, yearly and every year, for and during the first ——
years of the said term hereby demised, the rent of a peppercorn, on the last day thereof (if demanded): Reddendum and yielding and paying, therefore, yearly and every year, for and during the remaining —— years of the said term hereby demised, unto the said C. D., his heirs and assigns, the net yearly rent or sum of £---, of lawful money of Great Britain, by half yearly payments, on the —— day of, &c., and day of, &c., in each year, by even and equal por-

Parcels.

words.

⁽c) The parcels should be particularly described as to the admeasurement and boundaries.

tions, the first payment thereof to begin and to be made on the — day of, &c., 18—; the said several rents to be paid, and payable, from time to time, on the several feast days aforesaid during the said term, free and clear of all rates, taxes, charges, Free from assessments, and payments, whatsoever. (Add a taxes. (See p. 488.) covenant from the said C.D. with the said A.B., for payment of the rent and taxes.) And that Lessor w he, the said C. D., his executors, administrators, (See p. 489.) or assigns, shall and will, before the expiration of the first year of the said term hereby granted, at his and their own proper costs and charges, erect, build, complete, and in a workmanlike manner finish, one or more good and substantial brick messuages or tenements, upon some part of the ground hereby demised; and shall and will lay out and expend therein the sum of £——, or upwards. And also, Repairs. that he, the said C. D., his executors, administrators, and assigns, shall and will, from time to time, and at all times, from and after the said messuage or tenement, erection and buildings on the said piece of ground hereby demised, shall be respectively completed and finished, during the remainder of the said term hereby granted, when, where, and as often as need or occasion shall be and require, at his and their own proper costs and charges, well and sufficiently repair, &c., and to yield up, &c. p. 507.) And that he, the said C.D., his executors, To insure administrators, and assigns, shall and will, at his (See p. 491.) and their own proper costs and charges, from time to time, sufficiently insure all and every the messuages or tenements, erections and buildings, which shall be erected and built upon the said piece or parcel of ground hereby demised, or any part thereof, from casualties by fire, during the then remainder of the said term hereby granted, in some or one of the public offices kept for that purpose in London or Westminster; and in case the said messuages or tenements, erections and buildings, or any of them, or any part of any of them, shall at any time or times during the said term be burned

Lessor to enter and view. down, destroyed, or damaged by fire, shall and will, from time to time, immediately afterwards, rebuild, or well and sufficiently repair, the same. And further, that it shall and may be lawful, to and for the said A. B., his heirs and assigns, or any of them, with workmen or others, to enter and view, &c., and to give notice of repairs, &c., and for lessee to repair on notice, see p. 493. (And add a covenant for re-entry on non-payment of rent, or non-performance of any of the covenants, see p. 497. And for lessee's quiet enjoyment.) In witness, &c.

(25.)

Building Lease, with Power to take down Buildings, and use Materials.

Parties.

Testatum.

Old materials.

Operative part.

Premises.

This indenture, made the —— day of, &c., BE-TWEEN A. B., of, &c., of the one part, and C. D., of, &c. of the other part. Whereas, &c. Now THIS INDENTURE WITNESSETH, that as well for, and in consideration of, the costs and charges, that the said C. D. will be at in taking down the old buildings now standing on the piece or parcel of ground by these presents demised, (which he is at liberty to do, and to take and convert all the old materials, in erecting and building a new messuage or tenement thereupon, in manner hereinaster mentioned,) as also of the yearly rent, covenants, conditions, and agreements hereinaster reserved, expressed, and contained, by and on the part and behalf of the said C. D., his heirs, executors, administrators, and assigns, to be paid, observed, and performed, HE, the said A. B., doth by these presents demise, lease, set, and to farm let, unto the said C. D., his executors, administrators, and assigns, ALL that piece or parcel of ground, whereupon the aforesaid ruinous messuage, tenement or dwelling house yet stands, late in the tenure or occupation of P.S., next adjoining to the house or ground towards the east, in the occupation of, &c., and towards the west

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adjoining to, and abutting upon, the house or ground now in the occupation of, &c., situate and lying on the south side of —— street, in the parish of, &c., which said premises are more particularly delineated and described in the plan on the ground plot of the premises, drawn in the margin of these presents; together with the new messuage or tenement to be erected and built thereon, pursuant to the covenant for that purpose hereinafter contained. And all vaults, areas, lights, ways, drains, water- General courses, profits, commodities, and appurtenances whatsoever belonging, except, nevertheless, and always reserved out of this present demise, the free passage and running of water and soil, coming out of and from the other houses and tenements of the said A. B., and his other the tenants of the said parish of —, in, by, and through the channels and drains belonging to the said demised premises as have been formerly used, such tenants, upon reasonable request, paying their share and reasonable proportion of the charges of cleaning and repairing the same, as often as need shall require. To HAVE Habendum. AND TO HOLD the said piece or parcel of ground and premises hereby demised or mentioned or intended so to be, with their and every of their appurtenances, (except as before excepted,) unto the said C.D., his executors, administrators, and assigns, from, &c., for and during, and unto the full end and term of sixty-one years from thence next ensuing, and fully to be complete and ended; yielding Reddendum and paying, therefore, for the first year of the said of a pepperterm, the rent of one peppercorn only, on the last day of the same year, if the same shall be lawfully demanded; and yielding and paying, yearly and Reddendum every year, during the sixty years' residue of the of a yearly said term of sixty-one years, upon the four most usual days, &c. And the said C. D., for himslf, his Covenant by heirs, executors, administrators, and assigns, doth buildings. covenant, promise, and agree, to and with the said A. B., his executors, administrators, and assigns, and to and with every of them, by these presents,

(See p. 489.) in manner and form following, that is to say, that he, the said C. D., his heirs, executors, administrators, or assigns, shall and will, within the space of twelve calendar months next after the commencement of the said term hereby granted, at his and their own proper cost and charges, wholly take down the old buildings now standing on the said piece or parcel of ground hereby demised, which he or they are at liberty entirely to level and clear away, and convert all the old materials thereupon, to his and their own proper use, and in a good, substantial, and workmanlike manner, erect and build, perfect and finish, a new messuage or tenement, on the said piece or parcel of ground, even in front with the other houses or tenements of the said A. B.; and shall and will build the same with good and well burned bricks, and with mortar made with good lime and sand, well mixed, without any earth or loam, saving that the rubbish of the old wall may be used therein, being well mixed with a proper quantity of new lime; the height of stories, thickness of walls, and scantlings of

building act of parliament made and provided.

Lessee to do (Add a covenant to repair, &c.)(f) And, further,

Lessee to repair.

(f) The covenant to repair, &co., ran thus: "And furthermore, that he, the said C. D., his heirs, executors, administrators, or assigns, shall and will from time to time, and after such time as the said new messuage or tenement shall be erected and built as aforesaid, from time to time, and at all times during the continuance of the term of this present demise, at his and their proper costs and charges, when and as often as need shall require, well and sufficiently repair, uphold, support, maintain, assend, pave, scour, cleanse, empty, and keep, the same new messuage or tement, and all other buildings and erections which, during the term herely granted, shall be erected and built on the said demised piece or parcel of ground and premises, and all the walls, posts, pales, rails, fences, pavements, grates, sinks, drains, and houses of office thereto belonging, and which shall belong to the same, in, by, and with, all manner of neefful and necessary reparations, cleansings, and amendments, whatsoever. And also shall and will, together with the other tenants or lessees of the said parcel of new building, on the south side of the said street, contribute his and their part, share, and proportion, of the expense and charge of sinking and building a new common sewer of sufficient depth to drain the cellars and vaults of the said new houses, pursuant and according to the covenant for that purpose by him made for re-building the premises as aforesaid, and from and after such time as the said new common sewer shall be sunk and built as aforesaid, shall and will from time to time during the said term, bear, pay, and allow, a reasonable share and proportion for or towards the making, supporting, repairing, and amend-

timber, to be such as are directed and appointed for the best and second-rate buildings, according to the

Lessee to contribute towards a common sewer.

that he, the said C. D., his executors, administra-nothing to tors, or assigns, or any of them, shall not, nor will, joining at any time during the continuance of this present tenants. demise, do, or willingly suffer, any act, matter, or thing, to, in, or upon, the said demised premises, or any part thereof, that shall or may grow to the annoyance, grievance, damage, or disturbance of the said A. B., his heirs or assigns, or the person or persons so to be intitled in reversion or remainder as aforesaid, or other the tenants of the said, &c., aforesaid. (Add a proviso for re-entry,(g) and add the usual covenant for quiet enjoyment.) In witness, &c.

(26.)

A short Form of a building Lease.

THIS indenture, made the —— day of, &c., BE- Parties. TWEEN A. B., of, &c., of the one part, and C. D.,

ing, of all party walls, party gutters, common sewers, and drains, belong- Party walls. ing, and which shall belong, to the said demised premises, or any part thereof, when and as often as need or occasion shall be and require. And the said messuage, or tenement and premises, and every part thereof, with the appurtenances, so being well and sufficiently repaired, &c., shall and will, at the end, expiration, or other sooner determination, of the said term, peaceably and quietly leave, surrender, and yield up, unto the said A. B., or the person or persons who, for the time being, shall be entitled to the reversion or remainder of the premises, expectant on the determination of the said term; and moreover, to enter and view, &c.; and that he, the said C. D., his heirs, executors, administrators, or assigns, shall and will upon demand re-pay to the said C. D., or to the person or persons so to be entitled in reversion or remainder as aforesaid, all and every such sum and sums of money as he or they shall have expended and paid in

and about the same." (See p. 493.)
(g) The proviso for re-entry ran thus: "Provided always nevertheless, Proviso for that if the said yearly rent or sum of forty pounds shall happen to be be- re-entry hind or unpaid, in part or in all, by the space of fourteen days next after (See p. 497.) any of the said feasts or days of payment whereon the same ought to be paid as aforesaid, or if the said C. D., his executors, administrators, or assigns, shall permit or suffer any person or persons to inhabit or dwell in the said demised premises, or any part thereof, who shall use and follow the trade of a brewer, baker, butcher, vintner, victualler, poulterer, fish-monger, cheesemonger, soap-boiler, distiller, brazier, pewterer, smith, farrier, tallow-chandler, or pipe maker, or other noxious or noisy trade, without the liceuse of the said A. B., or the person or persons so to be in reversion or remainder as aforesaid, or his or their steward or other agents, for the time being, under his or their hand and seal first had and obtained in writing for that purpose; then and from thenceforth, in any of the said cases, it shall and may be lawful to and for the said A. B., and the person or persons so entitled in reversion or remainder as aforesaid, into and upon the said hereby demised premises, or any part thereof, in the name of the whole, to re-cuter, and the same to have again, re-possess, and enjoy, as in his or their first and former estate and right, anything hereinbefore contained to the contrary thereof in anywise notwithstanding."

Rental.

of, &c., of the other part; WHEREAS the said C. D. hath already expended considerable sums of money in building and finishing several new brick messuages or tenements on the ground intended to be hereby leased, and hath contracted with the said

Testatum.

A. B. for a lease of the same premises, upon the terms and in manner hereinafter mentioned. THIS INDENTURE WITNESSETH, that in pursuance of

the said agreement, and in consideration of the yearly rent and covenants by these presents reserved and contained, on the part and behalf of the said

C. D., his executors, administrators, and assigns, to be paid, done, and performed, he, the said A. B.,

north by these presents demise, lease, and set, unto the said C. D., his executors, administrators, and

assigns, ALL that piece or parcel of ground, late part

of a certain field, close, or ground, near, &c., in the parish of, &c., being at the north-east corner of,

&c., containing in front, next R. street being westward fifty-five feet of assize, or thereabouts; in

the rear, being eastward, fifty-one feet of assize, or thereabouts; and on the south side, next the ground

and buildings let to S. W., eighty-six feet nine inches of assize, or thereabouts, and delineated in

the map or plan in the margin of these presents; together with all ways, passages, profits, commodi-

ties, and appurtenances, to the said piece or parcel

of ground and premises hereby leased, belonging or Habendum. appertaining, or intended so to be. To HAVE AND

> TO HOLD the said piece or parcel of ground, and all erections and building now and hereafter to be erected and built, and all and singular other the pre-

> mises, with the appurtenances, hereby leased, unto the said C.D., his executors, administrators, and assigns, from, &c., until the full end and term of sixty

> years from thence next ensuing, and fully to be complete and ended; yielding and paying for the

first year of the term hereby leased, the rent of one peppercorn on the last day of the same year, (if the

same be lawfully demanded); and yielding and paying yearly and every year during the last fifty-nine

Premises.

First reddeudum.

Second reddendum.

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years of the time hereby leased unto the said A.B., his heirs and assigns, or such person to whom the immediate reversion of the said premises shall appertain, the yearly rent or sum of, &c., on the four most usual days, &c.; AND, &c., (add here a covenant to pay the rent, see p. 529). And, that Lesses to the said C. D., his executors, administrators, and finish and repair. assigns, or some or one of them, shall and will, at his, their, or some or one of their own proper costs and charges, on or before, &c., well and sufficiently tile and finish the said messuages or tenements, and from thenceforth, at his and their like costs and charges, well and sufficiently repair, uphold, support, sustain, maintain, amend, and keep the said intended messuages, tenements, or buildings, and that from time to time, and at all times during the said term, when and as often as need or occasion shall be or require. And also shall and will, at his and their, And to or some of their, own proper costs and charges, well cleanse. and sufficiently pave, purge, scour, cleanse, &c., see p. 536. And so yield up, &c., unto the said And to yield A. B., his heirs or assigns, or such person or per- up. (See p. 536.) sons, &c. And for the said A. B., his, &c., to re- To view, and enter and view, &c., and to give notice of repairs, for quiet &c., (see p. 537,) and for quiet enjoyment. In wit- (See p. 530.) ness, &c.

(27.)

Lease of Mines of Ore.

This indenture, made the —— day of, &c., BR- Perties. TWEEN A. B., of, &c., of the one part, and C. D., of,

&c., and E. E., of, &c., of the other part,

WITNESSETH, that in consideration of the rents, Testatum. reservations, covenants, and agreements, hereinafter expressed, he, the said A. B., doth, by these presents, grant, demise, set, and to farm let, unto the said (lessees,) their executors, administrators, and assigns,

ALL, and all manner of mines, pits, and veins Premises. of lead, tin ore, copper ore, or other metal or me-

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Power to work mines. away, &c.

tals, now open and known, or that may be found out by digging, delving, sinking, or otherwise howsoever, lying and being in the lands of the said A.B., called or known by the name of, &c., situate, &c.,(h) WITH full and free liberty to and for the said work mines, (lessees,) their executors, administrators, and assigns, from time to time, and at all times during the term hereby granted, to work and carry on the same to the utmost advantage; and to dig, delve, search, sink, trench, and mine, in and upon the said lands, called, &c., within the said parish of, &c., and every part thereof, at their free wills and pleasures, for the searching out, having, and taking up of lead, tin ore, copper ore, or any other metal or metals which shall be there found; and to follow the same according to the laws and customs of the stannaries, as fully in every respect as he, the said A. B., lawfully might do, if these presents had not been made, and the same so to be trenched digged and found, to take and carry away, from time to time, and at all times during the term hereby granted, with sufficient ground leave for the laying of all such lead ore, copper ore, or any other ore, metal or metals, as shall or may be there had or wrought; and also all ways, paths, passages, water-courses, cuts, emoluments, privileges, and appurtenances whatsoever to the same belonging, or therewith used and enjoyed; AND also all the estate, right, title, and interest, of him, the said A. B., of, in, and to, the said mines and premises,

Habendum.

To have and to hold, work, use, occupy, and enjoy, the said mines, pits, and veins of lead, tin ore, copper ore, or other metal or metals, with free liberty of digging, trenching, searching, and carrying away the same, with all and singular other the

Power to (h) Or say, "Together with full and free liberty and authority to and work mines, for the said C. D. and E. F., their executors, &c., to erect, build, and set up, any engines, furnaces, forges, mills, workshops, and other erections and buildings, for making and converting the tin or other ores, &c.; and to make drains, buddles, and bungsteads, for washing, dressing, and cleansing the same, and for other necessary purposes relating thereto. (For further additions to this precedent, if necessary, see the Lease of Mines, No. 28.)

premises hereby granted, set, or demised, with their, and every of their rights, members, and appurtenances to and by the said (lessees,) their executors, administrators, and assigns, from henceforth, for and during, and unto the full end and term of seventyfive years from hence next ensuing, and fully to be complete and ended;

Yielding, rendering, paying, and delivering, Reddendum therefore, from time to time, during the said term, every sixth dish, or one full sixth part of all the ore of lead, tin, copper, or other metals which during the said term shall be got, had, gained, or taken, from or out of the said mines.(i) (Add the time or

times of payment. See p. 610.)

PROVIDED ALWAYS, and it is hereby declared and Proviso in agreed, by and between the said parties to these lect in carpresents, and it is the true intent and meaning of mines. these presents, that if the said (lessees), or their executors, administrators, or assigns, shall, at any time or times, during the said term, refuse, omit, or neglect to carry on and work the said mines, with such a competent number of workmen as shall be thought proper to work and carry on the same, and in the best and most effectual manner, and according to the usual practice and course of carrying on such mines with effect, for the space of thirty days together, or for the space of thirty days in any four calendar months of any one year of the said term, (cases of inevitable necessity and unavoidable accidents only excepted); or, if the said (lessees), their executors, administrators, or assigns, or any of them, at any time or times during the said term, shall not deliver, or cause to be delivered, to the said A. B., his heirs or assigns, every sixth dish, or the sixth part of all the said ore, reserved to the said A. B., his heirs and assigns, as aforesaid, according to the

⁽i) Or thus: "The same to be well cleansed, washed, dressed, and made Cleansing. merchantable, and fit for smelting, and delivered on the —— day of, &c., (or say, within the space of —— days next after the same shall have been procured,) giving from time to time, and at all times, unto the said (A.B.), his heirs and assigns, or his or their agent or toller, —— days' previous notice of the time and place of such rendering and delivering. 3 = 2

true intent and meaning of these presents, within the space of twenty days next after the same ought to be rendered or delivered as aforesaid; THAT then, and in either of the said cases, and so often as the same shall happen, it shall and may be lawful, to and for the said A. B., his heirs or assigns, into and upon the said mines and premises, or any part thereof, in the name of the whole, to re-enter, and thereout and therefrom to expel and remove the said (lessees,) their executors, administrators, and assigns, and every of them, their, and every of their agents, workmen, and servants, and to have and enjoy the same again, as in his and their former estate, as fully as if these presents had not been made; and that from thenceforth the term, estate. and interest hereby granted or set, or so much thereof as shall be then to come, shall cease, determine, and be absolutely void to all intents and purposes whatsoever, anything herein contained to the contrary thereof notwithstanding.

Covenant to render sixth dish, &c.

And the said (lessees), for themselves, jointly and severally, and for their several and respective heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree, to and with the said A. B., his heirs, &c., in manner following, (that is to say,) that they, the said (lessees,) or some of them, their, or some or one of their executors, administrators, or assigns, shall and will from time to time, during the said term, well and truly yield, render, pay, and deliver, or cause to be yielded, rendered. paid, and delivered, unto the said A. B., his heirs or assigns, the sixth dish, or one full sixth part of all the said ore reserved to the said A. B., his heirs and assigns, as aforesaid, according to the said reservation, and according to the true intent and meaning of these presents.

Covenant by lessees to carry on mines with a competent number of workmen.

And further, that they, the said (lessees), or some of them, their, or some of their executors, administrators, or assigns, shall and will, from henceforth during the said term, and at all times, work and carry on, or cause, or procure to be worked and carried on, with

such a competent number of workmen as shall be thought proper, the said mines hereby demised and let, in an effectual manner, and according to the usual course and practice of carrying on such mines with effect, and according to the true intent and

meaning of these presents.(j)

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And the said A. B., for himself, his heirs and for quiet assigns, doth covenant, grant, and agree, to and with and working the said (lessees), their executors, administrators, of mines. and assigns, that he and they paying, rendering, doing, and performing all the rents, reservations, covenants, and agreements herein contained, on their parts and behalf to be paid, rendered, done, and performed, according to the true intent and meaning of these presents, shall and may, for and during all the said term of, &c., peaceably and quietly have, hold, use, occupy, work, carry on, and enjoy the said mines, pits, and veins of lead, tin ore, copper ore, or other metal or metals, and all and singular other the premises hereby demised or set, or meant or intended so to be, with their appurtenances, without any let, suit, trouble, interruption, molestation, claim, or demand whatsoever, of or by the said A. B., his heirs or assigns, or any of them, or any other person or persons, lawfully claiming,

(j) If the lessor intends at any time during the term to become an adventurer in the works, a proviso may be added as follows: "And it is case the lessereby agreed and declared, by and between all the said parties, and the sor shall be true intent and meaning of them, and of these presents, is, that if at any minded to time hereafter, during the said term, the said A. B., his heirs or assigns, become an or any of them, shall be minded and desirous to adventure in the said work, for one full sixteenth part of the same, over and above the said sixth dish, or sixth part thereof, and of such his mind and desire, shall give or leave three months' notice in writing to and for the said (lesses). give or leave three months' notice in writing to and for the said (lessees), or any of them, their, or any of their, executors, administrators, or assigns, or to any person or persons who shall be employed as clerk or clerks, overseer or overseers, of the said work, for the time being, or any of them; that then, from and immediately after the expiration of such three months, the said A. B., his heirs or assigns, shall be and become, and shall be admitted to adventure and participate in the said mines, for one full sixteenth part thereof, for the then residue of the said term, and shall come in on a clear floor, and shall have, receive, and enjoy, one full sixteenth part of all the profits and advantages thereof from thenceforth; he, the said A. B., his heirs or assigns, from thenceforth paying one full sixteenth part of all charges and expenses of working and carrying on the said mines; in like manner as the other adventurers and partners therein shall pay their proportions of the same charges and expenses, as usual in such cases."

or to claim by, from, or under him, them, or any of them. In witness, &c.

(28.)

Lease of coal Mines.

Parties.

This indenture, made the —— day of, &c., mr-TWEEN A. B., of, &c., of the one part, and C. D.,

of, &c., of the other part.

Recital of contract beand lessee for rent of mines.

WHEREAS, the said A. B. hath contracted and tween lessor agreed with the said C. D., to grant unto him, the said C. D., a lease or demise of (k) all and every the mines of coal and clay already found and discovered, and which shall and may hereafter be found or discovered, in, under, or upon, all those closes, pieces, or parcels of land or ground hereinafter described, with full, ample, and sufficient powers for working, getting, raising, selling, and disposing of the same, at and under the several rents or royalties, and reservations hereinafter mentioned and reserved, for and in respect of the same mines, and subject to the covenants, conditions, provisoes, stipulations, restrictions, and agreements, hereinafter expressed and contained.

Testatum clause.

Now this indenture witnesseth, that in pursuance of the said recited contract, and in consideration of the yearly rents, royalties, reservations, covenants, provisoes, and agreements, hereby reserved, and hereinafter expressed and contained, and by and on the part and behalf of the said C.D., his executors, administrators, and assigns, to be paid, done, and performed, HR, the said A. B., DOTH by these presents grant, lease, and demise, unto the said (lessee), his executors, administrators, and assigns,

And operative part.

> ALL and singular(1) the mines, layers, veins, seams, and strata of coal and brick clay, already found and

Land also demised.

Description of mines

(k) If the land is intended to be demised, say, "The several closes, pieces or percels of land, hereunder described, and also all," &c. (the

When land demised.

mines).

(I) If the land is intended to be leased, describe the closes first; my, "All those several closes, pieces or parcels of land or ground, situate, its., called, &c.;" and then will follow the description of the mines.

discovered, and which shall or may at any time or and pretimes hereafter be opened, found, or discovered, in, under, or upon, all and every or any of the pieces or parcels of land hereinafter more particularly described, (that is to say,) ALL that piece or parcel of land or ground situate, (m) &c., and called by the name of, &c., and also all that piece or parcel of land or ground situate, &c.; together with With powers full and free liberty, license, power, and authority, dig, wire to and for the said A. B., his executors, adminis-work, &c. trators, and assigns, and his and their workmen, in and upon the said lands and premises, or any part thereof, to enter, and there to search, seek, dig, drive, wire work, and make, greves, shafts, drifts, trenches, sluices, way gates, water gates, and water courses, and to lay and make any rail or other ways or roads for winning, working, getting, raising, or procuring, all the said mines of coal and brick clay which shall be found within, upon, and under, the said lands and premises before described, or any part or parts thereof; together also, with the like Lessee to power and authority for the said (lessee), his executors, administrators, and assigns, at his and their free will and pleasure, to build and erect all such houses, hovels, lodges, sheds, bridges, and other conveniences, for the standing, laying, and placing, of workmen, work houses, coal gear, and utensils, to be used or employed in or about the working or carrying on of the works of the said mines of coal and brick clay.(n) And to take, send, and carry

(m) Or thus: "All those coal mines, coal pits. clay pits, collieries, seams Description and veins of coal, as well open as not open, which can, shall, or may be of mines. wrought, dug, found out, or discovered, within, upon, or under, all or any of the closes, pieces or parcels of land, and which, &c.; and all and every the whimseys, gins, engines, and other machinery and fixtures, now being in and about the said coal mines and premises, and specified in the schedule hereunder written, or hereunto annexed."

(n) Or say, "To make sufficient pit room, ground room, weal room, and Ground keep room, in and upon the said lands and premises, or any part or parts room, & thereof, for the standing, laying, and placing, as well of all the coals which shall be gotten from the said mines, as also of all such cinders, stones, gravel, clay, and other rubbish, which shall proceed from the said coal mines and clay pits, in the digging and working thereof; and also with full and free liberty to set up are all or any of the said lands. with full and free liberty to set up upon all or any of the said lands, or any part or parts thereof, such mills or engines, houses, stables, woods,

And to remore erections.

clay for making bricks for use of mines and to do all other acts, &c.

away, with horses, wains, carts, and other carriages, all the coal and brick clay, or any to be wrought, wone, and gotten forth, and out of the said mines and quarries to be opened and entered as aforesaid. and sufficient ground room, weal room, and pit room, for laying and placing the said coal and brick clay, and manufacturing the same. also, from time to time, at the free will and pleasure of the said C. D., his executors, administrators, and assigns, to alter, remove, pull down, or wholly carry away and dispose of, all the said engines, gins, whimseys, or other erections, matters, and things, which have been or shall be made by him, the said C. D., his executors, administrators, and assigns, upon the said premises, for the purposes aforesaid. And also, with full liberty, power, and authority, to dig clay and loam out of and in the said lands, to make bricks for the bridges, pits, and works, to be made for the use of the said mines and Power to dig collieries carried on under this demise. (o) AND to do, perform, and execute, all and every such other acts, matters, and things, in and upon the said lands and premises as shall be deemed needful and requisite for the working, getting, raising, and manufacturing, of the mines of coal and brick clay, for the use or benefit of the said (lessee), his executors, administrators, and assigns,(p) save and except, and always reserved, (q) out of these premises, and the lease or demise hereby made, or intended to be made, unto the said A. B., his, &c.(r)

> hovels, lodges, sheds, and bridges, as shall be needful for the drawing and carrying away water from the collieries, and all the brick to be gotten or wrought out of the said mines, quarries, and clay pits, or for the standing, laying, or placing, of the workmen," &c. (as above).
>
> (o) Or thus: "And also, with sufficient liberty of passage, and leave to make railways, wagon, or other roads, in and over the said pieces or par-

clay pits.

(q) See this exception, p. 448, No. 8. (r) See note (d) to p. 487.

cels of land, and to perform all other acts and things necessary for carrying away the coals or produce of the said mines or pits to the canal or other places of delivery, and to do, perform, and execute," &c.

(p) Here may be added, "He, the said O. D., his, &c., doing as little spoil and damage of ground as possible in the working of the said coal and

TO HAVE AND TO HOLD(8) the said mines of coal, Habendum. and brick clay, and other clay, and all and singular other the premises hereby granted and demised, or mentioned, or intended so to be, with their, and every of their, appurtenances, (except as aforesaid,) unto the said C. D., his executors, administrators, and assigns, from the ---- day of ---- now last past, for, and during, and unto, the full end and term of ---- years thence next ensuing, and fully to be complete and ended, determinable, nevertheless, as hereinafter mentioned.

Yielding and paying, therefore, unto him, the Roddendum said (lessee), his, &c., the several respective rents, of rents and royalties. royalties, reservations, and sums of money, following, (that is to say,)(t) the sum of one shilling for One shilling each and every ton weight of coal(u) which, during per ton for coal. the continuance of the said term of ---- years, shall or may be gotten, wrought, and taken, from the said lands and premises, [and coal mines hereby demised]; the further sum of four-pence for each Four-pence and every ton of slack which shall or may be gotten, per ton for wrought, and taken, as aforesaid; the further sum Two-pence of two-pence for each and every sack of coke which per sack for shall or may be made during the said term, from the said coal so to be gotten, wrought, and taken, as aforesaid; and the further sum of one shilling One shilling and six-and sixpence for every thousand of bricks, tiles, or pence per quarries, which shall be made from any common thousand for bricks, tiles, brick clay, and which, during the said term of years, shall be raised, gotten, made, and sold, from any part or parts of the said lands and premises, by him, the said C. D., his executors, administrators, and assigns, and so in proportion for any greater or And so in less quantity of the said several articles respect- proportion. ively; each and every such tons to consist of and

— or quarries.

(u) Here may be inserted, "Except such coal which may be used in Small coal. the working of the said engines, and in burning bricks and tiles."

⁽s) If the lands are demised say, "To have and to hold the said closes, Lands depieces or parcels of land, &c., and also the said mines," &c. mised.

(i) If the land be included in the demise say, "The yearly rent or sum When land of £—, as and for the service rent of the said closes, pieces or parcels of land or ground, hereby demised;" and also yielding and paying, &c., as in the characteristics. in the above precedent.

Weights to be asceraccurate gnage and weighing mechines.

contain twenty hundred, and each hundred to consist of and to contain one hundred and twenty pounds; and such weight to be ascertained by a tained by an proper and accurate guage of the boat wherein such coals shall be delivered, if carried away, sold, and disposed of, by the boats: (v) and by a

Repair of machines.

be payable quarterly.

Without deduction.

proper and accurate weighing machine, if corried away or disposed of by land sale; and such weighing machine, or weighing machines, to be forthwith prepared and erected for that purpose by, and at the costs and charges of, the said C. D., his executors, administrators, and assigns, and to be from time to time repaired, and kept in good and sufficient repair, at his and their like Royalties to expense; ALL which said several and respective royalties, reservations, or sums of money, hereinbefore mentioned and reserved, shall be paid and payable to the said A. B., his, &c., by quarterly payments, at or upon the several and respective days or times hereinafter mentioned and appointed for payment thereof, (that is to say,) the —— day of, &c., in each and every year during the term hereby granted, without any deduction or abatement whatsoever, for or in respect of taxes, or on any other account whatsoever; the first payment of the said rents, royalties, or reservations, to commence and become due and payable the —— day of, &c., which will be in the year 18 ——. And in case(10) in either of the two quarters, during the term of six months so computed from the 24th day of June. now next ensuing, the said rent, reservations, or royalties, reserved for the said large coal only,

Ascertaining of weight As to deficiency of lurge coal.

(v) Or say, "And such weight to be ascertained by an accurate guage of the boat, &c., if carried away by water; and by a proper weighing machine, if carried away by land."

(w) Or thus: "And in case in any one quarter of the year, from the said day of — in the year 18 —, until the said mines shall be completely worked out or exhausted, or the present lease determined, the said rent, reservation, or royalty, reserved for the said large coal only, shall not have amounted during any such quarter of a year, to the full sum of # ---, then yielding, &c., unto, &c., so much, and such full and additional sum of money as the said rents, royalties, or reservations, shall have fullen short of such last mentioned additional sum, to be paid upon the day which shall conclude the quarter wherein such deficiency shall have happened; nevertheless," &c. (as in p. 611).

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during either such quarters of a year, shall not have amounted to the full and clear sum of £ ---; then Reddendum yielding and paying unto the said A. B., his, &c., of additional sums for so much and such further and additional sums of large coal money as the said rents, royalties, or reservation, for the said large coal, shall have fallen short in either of those quarters of a year, of the sum of £ —, as and for the rent, reservation, or royalty, for and in respect of such additional sum of money to be paid upon such day, which shall conclude the quarter wherein such deficiency shall have happened as aforesaid; nevertheless, the said C. D., his executors, administrators, and assigns, in case of his or their having made up any such deficiencies or failure in the said rents, royalties, or reservation, arising out or from the said large coal as aforesaid, shall be at liberty in any succeeding quarter of the year, wherein the said mine rent, royalty, or reservation, for the said large coal only, shall exceed the quarterly sum of £ ----, to make up the former Power to shorts or deficiencies, by selling or disposing of make up such quantity of the said large coal as at the rate of shorts. the said reserved rent, reservation, or royalty, shall be sufficient to reimburse himself and themselves the money he or they shall have paid to make up the deficiency of the said quarterly mine rent or royalty, of \mathcal{L} —— as aforesaid, without paying any rent for such last mentioned quantity. And in case in any one quarter of the year, during the term of one year, to be computed from the 25th day of December, which will be in the year 18—, the said rent, reservation, or royalty, reserved for the said large coal only, during each of such last mentioned quarters of a year, shall not have amounted to the full and clear sum of £ ---; then also yield- Further reding and paying unto the said A. B., his, &c., so dendum and additional much and such further and additional sums of sums upon money as the said rents, royalties, or reservations, of large coal for the said large coal, shall have fallen short in in certain either of those last mentioned quarters of a year, of year. the sum of \mathcal{L} —, as and for the rent, reservation,

falling short

Nevertheless lessee to make up the royalty shall at a subsequent period exceed so much.

As to deficiency in other quarters.

Further red- £ . dendum.

Lessee to make up shorts at a future period, by selling coals to

or royalty, for and in respect of the said large coal, such last mentioned additional sum to be paid upon the day which shall conclude the quarter wherein such deficiency shall have happened as aforesaid; nevertheless, the said C. D., his executors, &c., case of his or their having made up any such defiformer shorts when ciencies or failures in the said rents, royalties, or reservation, arising out of or from the said large coal as aforesaid, shall be at liberty from time to time, in every succeeding quarter of a year, when the said mine rent, royalty, or reservation, for the said large coal only, shall exceed the last mentioned stipulated quarterly sum of £ ----, to make up the former shorts and deficiencies, by selling or disposing of such quantity of the said large coal, as at the rate of the said reserved rent, reservation, or royalty, shall be sufficient to reimburse himself and themselves, the moneys he or they shall have paid to make up the deficiencies of the said quarterly mine rent or royalty of £ --- as aforesaid, without paying any rent for such last mentioned quantity. And in case in any one quarter of a year, from and after the 25th day of December, 18-, and until the said mines shall be completely worked out and exhausted, or the present lease determined, the said rent, reservation, or royalty, reserved for the said large coal only, shall not have amounted, during any such quarter of a year, to the full and clear sum of -; then also yielding and paying unto the said A. B., his, &c., so much and such further and additional sums of money as the said rents, royalties, or reservations, shall have fallen short in each and either of such quarter of a year, of the sum of £as and for the rent, reservation, or royalty, for and in respect of the said large coal, such last mentioned additional sum to be paid upon the day which shall conclude the quarter wherein such deficiency shall have happened as aforesaid; nevertheless, the said C. D., his, &c., in case of his or their having made up any such deficiency or failure in the said rent, royalty, or reservation, arising out

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of or from such large coal as aforesaid, shall be at reimburse liberty from time to time, in any succeeding quarter without payof a year, within the period of two years next fol- ing royalty. lowing, when the said rent, royalty, or reservation, for the said large coal only, shall exceed the last mentioned stipulated quarterly sum of \mathcal{L} ——, to make up former shorts or deficiencies, by selling or disposing of such quantity of the said large coal as aforesaid, at the rate of said reserved rent, reservation, and royalty, as shall be sufficient to reimburse himself and themselves the moneys he or they shall have paid to make up the deficiencies of the said quarterly rent or royalty of £ ----, without paying any rent or royalty for such last mentioned quantity. And in case at any time or times, during the con- As to tinuance of this demise or lease, any advance or in- advance in price of crease shall take place in the price of coals, over and coals. above, or upon, and beyond, the following prices of coals, cokes, slack, bricks, tiles, and quarries, being the present selling prices thereof respectively, (that is to say,) for large coals, seven shillings and sixpence per ton; for slack, one shilling and sevenpence per sack; and for bricks, twenty-eight shillings for every thousand; then yielding and Further paying unto the said A. B., his, &c., in addition to reddendum. the several fixed royalties or mine-rents hereinbefore expressed and reserved respectively; one fourth part of such advance or increased price, at which all or any of the said last above-mentioned articles to be raised, gotten, or made, out of and from the said mines of coal and clay hereby demised, shall be sold over and above the prices of seven shillings and six-pence, &c., above-mentioned, except any increase which may happen by any future tax upon coals and bricks. (x)

⁽x) The mode of paying the royalties may be introduced thus, as the Mode of same may be agreed upon: "And the same several royalties, rents, or paying roysums of money, shall at all times be answered and paid, if the said C. D., alties. his executors, administrators, and assigns, shall think fit, in good and lawful British money, or notes of the governors and company of the Bank of Magland at his on their entire or in any one or most good and of England, at his or their eption, or in any one or more good and negotiable bankers' bill or bills of exchange, bankers' draft or drafts, or bankers acceptance or acceptances, payable in London, to be respectively

Proviso that no part of the large coal to be converted into coke.

Lessee to ooke such are customary.

No rents payable on alack used by fire engines for or coals for workmen, or in erections on the premises.

PROVIDED ALWAYS, and it is hereby expressly declared, by and between the said parties hereto, that no part of the large coal whereon the rent or royalty of one shilling for each and every ton thereof is hereby reserved, shall at any time or times, during the said term, upon any pretence, or for any purpose whatsoever, be converted into coke, or sold as slack, by the said C. D., his executors, administrators, and assigns. And further, that the convert into said C. D., his executors, administrators, and ascoals only as signs, shall and will from time to time, and at all times during the said term, convert into coke and slack respectively all such description of coals only which, according to the custom of the country, are usually converted into coke and slack, in respect of which coke or slack a rent or royalty of two-pence for every sack of cokes, and four-pence for every ton of slack, is or are hereby reserved. ALSO, that no such rents or royalties as aforesaid, shall be demanded of or from or paid by, the said draining, &c. C. D., his executors, administrators, or assigns, for or on account of any slack to be used or consumed by fire engines, or steam engines, or whimseys, erected, or to be erected, for draining or drawing water or coals from the said collieries or mines, or for or on account of any coals to be used by the workmen to be employed in or about the said works and premises, as are customary to be allowed to them for their domestic purposes, nor for any purpose of making bricks or tiles to be used, applied, or employed, in any of the works, drains, tunnels, soughs, walls for keeping out or preventing the

> dated on the several and respective quarter days in each and every year in which the said royalties, rent, or sums of money, hereinbefore mentioned falls due, at a period not exceeding three months from the date of each and every such bill or bills, draft or drafts, acceptance or acceptances; and such draft or drafts, acceptances, respectively, to be drawn or endorsed by or in the name of the said C. D., his executors, administrators, and assigns, on the person or persons for the time being carrying on the said works of the said intended colliery; but no such bill or bills, draft or drafts, acceptance or acceptances, shall be deemed a satisfaction of the said royalties, reservations, or sums of money, for which they shall be paid, unless such bill or bills, draft or drafts, acceptance or acceptances, respectively, shall be duly honoured and paid, when and as they shall severally and respectively fall due."

communication of damps or fire within the said pits, nor on account of the bricks or tiles to be used in making, erecting, or building, any wharfs, quays, warehouses, bridges, houses, erections, or buildings, in or upon, or under, the said lands, for the better carrying on the said mines and colliery, and premises, at any time, and from time to time, during the continuance of the said term of sixty

years.

PROVIDED FURTHER, and it is hereby also agreed For suspenand declared, by and between the said parties to these sion of roypresents, that if the working of the said mines or col- stoppage by lieries shall at any time or times hereafter be totally fire. and entirely suspended or stopped, by any fault or faults in the said mines, or by any accident through fire, or by water, or other inevitable accident, for and during the space of any one or more full and entire quarter or quarters of a year, but not for any less period than one full and entire quarter; and if the said C. D., his executors, administrators, or assigns, do and shall give notice in writing to the said A. B., his, &c., of each and every suspension or stoppage within the space of fourteen days next after the same shall happen; that then, and in each, and in all and every such cases, no such rents, royalties, or reservations, hereinbefore reserved in respect of the said mines afterwards, shall be demanded of or from, or paid and payable by, the said C. D., his executors, administrators, or assigns, for and during such time or period, or times or periods, as the working of the said mines or collieries shall be so totally and entirely suspended or stopped, by or through any of the reasons or causes aforesaid; and whether such stoppage shall commence at the beginning of, or at any other period within, any such quarter or quarters, (in case he, the said C. D., his executors, administrators, or assigns, shall during such time or period, or times or periods, use and exert his and their utmost and best endeavours to remove such suspension, hinderance, or stoppage,) and such suspension shall in each and every instance

be computed from the day or days on which the notice, by this present proviso required to be given, shall be actually served or delivered. PROVIDED ALWAYS, &c. (For entry and distress in case of non-payment of rent, royalties, &c.)(y)

Power for preventing

(y) This proviso may run thus: "Provided also, and it is hereby expressly declared and agreed, by and between the said parties to these prothe carrying sents, that in case at any time or times hereafter mentioned, during the ment of rent next over or after every or any of the said days or times of payment whereupon the same ought to have been paid as aforesaid, then and un every such case, it shall and may be lawful to and for the said A. B., his, &c., to stop, hinder, and obstruct, the loading, vending, and carrying, any of the coals, slack, clay, bricks, tiles, or quarries, from off the said premises. And also, to enter upon, seize, and distrain, all and every, or any of the coals, slack, cokes, bricks, tiles, quarries, or clay, and also the horses, engines, whimseys, gins, wagons, carts, ropes, rollers, wheels, tools, live and dead stock, utensils, and materials, used and employed in and about the said works, which shall be found in and upon, or about the lands, mines, and works, hereby demised, or intended so to be; and the distress and distresses there and then found, to take, lead, carry away, wil, and dispose of the same, in like manner as in all other cases of rent reserved on common demises for years; and out of the money arising by such sale, (if any,) to retain and take all arrears of the said rents, royalties, and reservation; and also the costs and charges of making and keep ing such distress and distresses, and of the sale thereof, rendering the overplus (if any) unto the said C. D., his executors, administrators, and assigns. Provided also, and these presents are upon this condition, that if it shall happen that the suid rents, royalties, and reservations, or any one of them, or any part or parts of the same respectively, shall have been unpaid by the space of sixty days next after any one or more of the said days or times whereupon the same ought to be paid as aforesaid, and no sufficient distress or distresses can or may be found or gotten on the said demised premises to answer such arrear or arrears; or if the said C. D., his executors or administrators, shall at any time or times hereafter, during the continuance of the said term of ——years hereby demised, set, let, or part with the possession of the said premises hereby demised, or any part or parts thereof, or transfer this present demise or lease, for all er any part of the said term hereby granted, to any person or persons whom-soever, without the consent in writing of the said A. B., his, &c., for that purpose first had and obtained, save and except to, or in trust for, a wife, child, or children, or to a partner or partners; or in case he, the said C. D., shall at any time or times hereafter commit any act or acts of bankruptcy whereupon a flat in bankruptcy shall or may be awarded and issued gainst him, and under which he, the said C. D., shall be duly foundend declared to be a bankrupt; or in case he, the said C. D., his executors, administrators, or assigns, shall make default in the performance of any of the covenants herein contained, then and in all or any of the said cases as aforesaid, it shall and may be lawful to and for the said A. B., his, &c., into, and upon, the said hereby demised lands, mines, and premises, or any part thereof, to re-enter, and thereout and therefrom to eject, expel, put out, and remove, the said C. D., his executors, administrators, and assigns, and his and their workmen, labourers, and servants, and every of them; and to have, hold, use, occupy, possess, and enjoy, the same lands, mines, and premises, as in his, her, or their former estate, as fally and effectually to all intents and purposes whatsoever, as if these presents had not been made; and also to work, win, and get, the said mines and minerals hereby demised, and sell, convert, and take away the same, to and for his and their own use and benefit, and from thenceforth the said

Proviso for re-entry in default of payment of rent

Or underletting, &c.

Or of bankruptcy.

PROVIDED ALSO, and it is hereby fully agreed and Accounts bedeclared upon, by and between the said parties to tween the these presents, and it is the true intent and meaning of them, and of these presents, that the said C. D., his executors, administrators, and assigns, shall, during the continuance of the said term of sixty years hereby granted and demised, or intended so to be, keep, or cause to be kept, on some part of the said lands hereby demised, or intended so to be, fair, open, just, and regular accounts in writing, to be made and entered from time to time, of the quantity of coal, slack, and cokes, bricks, tiles, and clay, which shall from time to time have been raised, gotten, sold, or employed, from, out of, upon, or about, the said mines, lands, and premises, hereby granted and demised, or intended so to be, specifying particularly the times or dates of Times of such gettings, sales, uses, coversions, or employ-sales to be ments, and the number of the boats, and the names stated. of the steerers, by which the same are sent away, and the several and respective quantities used, employed, expended, and consumed, in making of brick or tiles, converting of the said coal into cokes. manufacturing tools, machines, and engines, for the use of the said works, and in the houses or habitations of workmen, servants, or labourers, and in and upon the quays, wharfs, walls, furnaces, soughs, drains, erections, and buildings, as aforesaid; such entries of the quantities of coal, slack, and cokes, bricks, tiles, and clay, to be made in the books of account before any of the several articles shall have been removed from off the premises.

And Also, that the said C.D., his executors, And lessee to deliver administrators, and assigns, shall and will, once in true copies

term of —— years, and all the right and interest hereby granted and demised, or intended so to be, or so much thereof as shall be then to come and unexpired, and every clause, covenant, and agreement, herein contained, shall cease, determine, and be absolutely void, to all intents and purposes whatsoever, save and except so far as shall be necessary to recover any arrears of rents or royalties, or to recover compensation for any breach or breaches of any of the covenants, provisoes, or agreements, herein contained, anything herein contained to the contrary notwith-

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of such accounts.

And for

A. B. to appoint check

clerks and viewers.

every quarter at least, during the continuance of the said term, (that is to say,) within ten days next over or after each and every 25th day of March, 24th day of June, 29th day of September, and 25th day of December, in each and every year, during the continuance of the said term of sixty years, deliver, or cause to be delivered, to the said A. B., his, &c., or his or their agent or agents, true, perfect, and correct copies of all such accounts, for the custody, perusal, and approbation, of the said A. B., his, &c., without making any charge for the same; and that it shall be lawful for the said A. B., his, &c., to appoint, employ, and keep, at his or their own expense and charges, agents, check clerks, inspectors, viewers, stewards, or bailiffs, to attend and reside constantly and regularly, or occasionally, as he or they shall think fit, upon, in, or near, unto the said intended colliery or works.

For lessor view.

AND ALSO, that he, the said A. B., his, &c., by to enter and himself or themselves, or such agents, check clerks, viewers, stewards, or bailiffs, or any other skilful person or persons, whom he or they shall appoint as aforesaid, shall and may enter into and upon the said lands and premises, and into and upon the said buildings, erections, engines, shafts, pits, and other work, there to view the state and condition, and the manner in which the same are carried on, and that without the hinderance, interruption, obstruction, or molestation, of the said, &c., but on the contrary thereof, with the aid, help, and assistance, of the said C. D., his executors, administrators, and assigns, agents, workmen, servants, and labourers, and also to view his and their implements and utensils. (2)

Coals to be gotten by means of shafts or pits to be sunk in and upon the lands.

PROVIDED ALSO, and it is hereby fully agreed and declared, by and between the said parties to these presents, that all coal, slack, and clay, to be raised and gotten from time to time, during the continuance of the said term hereby granted, from and

⁽z) Here may be added, "Provided always, that the said shafts or mines shall not be viewed as aforesaid oftener than once in the week, and so that the workings of the said coal mines, &cc., shall not be thereby obstructed longer than necessity may require for the taking of such views."

out of the said mines and premises, by virtue of these presents, shall be raised and gotten, by or by means of shafts or pits to be sunk and made in and upon the said closes, lands, and premises, hereinbefore described, or some part or parts thereof, and not upon, or in communication with, any other lands or grounds whatsoever. Provided ALWAYS, &c., (add a clause of arbitration).(a)

Provided Always, and it is hereby expressly Power for declared and agreed by and between the said par-lessee to abandon ties to these presents, and the true intent and mines.

(a) The following clause of arbitration was added: "Provided also, and Clause of It is hereby further declared and agreed, by and between the said parties to arbitration. these presents, that if at any time during the continuance of the said term of years hereby granted, or after the expiration or other sooner determination thereof, any variance, controversy. doubt, dispute, or question, shall arise between the said parties hereto, or their respective heirs, or representatives, touching or relating to these presents, or the construction of the same, or in any respect relating to the mines and minerals, and other the premises hereby demised, the same shall be, and is, and are, hereby agreed to be referred to arbitration and umpirage in manner following, (that is to say,) in any such case the party desiring and intending to refer the same to arbitration shall, within one calendar month after such question, doubt, dispute, or difference, shall have arisen, give notice in writing to the other of the said parties, or some or one of them, by leaving such notice in or at his and their last and most usual place of abode or residence, naming in such notice the person who is or shall be chosen by him or them, as his or their arbitrator or umpire, and the matter, point, or question, in dispute, intended to be referred to arbitration, and requiring the other party or parties to name or choose his or their arbitrator within six weeks from the time of serving such notice; and if within the space of six weeks to be accounted as aforesaid, the person or persons upon whom, or at whose abode or dwelling house, such notice shall have been served or left as aforesaid, shall not have given the like notice in writing, and left with, or served the same upon, the person or persons requiring the nomination and appointment of an arbitrator, or at his or their last abode, or usual place of residence, in like manner, naming an arbitrator on his or their part or parts; then it shall and may be lawful, to and for the person or persons desiring such reference, to name a second arbitrator, who shall be empowered and enabled to act in every respect, and in the same manner, as if he had been originally nominated and appointed by the party refusing, neglecting, or omitting to name and appoint another arbitrator as aforesaid. And in every such case, such two arbitrators shall, before they enter upon the matter or business so referred to them, and within six weeks after they shall have been so named and appointed, nominate and elect some person to be umpire, and finally decide in case of the dispute. And it is hereby agreed, by and between the said parties hereto, that the said submission shall or may be made a rule of her majesty's court of queen's bench, at Westminster, in case the same shall be required by either of the parties in difference; and that the said parties differing, shall execute arbitration bonds to each other, in which the conditions thereto subscribed shall be clearly set forth, and contain the question, point, or matter, in difference, and the time or period for making and delivering such award or umpirage, and also the assent of the said parties that their submission to such award or umpirage shall be final and conclusive, and to be made a rule of her majesty's court of queen's bench at Westminster."

And in such meaning of them, and of these presents, is, that in case for lescase the said C.D., his executors, &c., shall at any sor to enter. time or times during the said term, hereby granted, or intended so to be, be minded or desirous of abandoning or relinquishing the said mines of coal, hereby demised, or intended so to be, and the future working thereof, it shall, and may be lawful to and for the said C. D., his executors, &c., upon giving six calendar months' notice in writing, of such his intention, to the said A. B., his, &c., to abandon, relinquish, and give up the said mines of coal, hereby demised, and the future working thereof, unto the said A. B., his, &c., at, or upon the expiration of six calender months next, after the date and service of such notice; and that it shall and may be lawful to and for the said A. B., his, &c., to reenter, and the same and every part thereof, to have again, retain, repossess, and enjoy, as in his or their former estate; and then, and from thenceforth, this present indenture and the term of years hereby created, and every covenant, clause, article, and thing, herein contained, shall cease, determine, and be utterly and absolutely void, and of non-effect to all intents and purposes whatsoever, (save and except so far as is necessary to recover any arrears of rent or other compensation, for any breach of covenants anything herein contained to the contrary thereof in anywise notwithstanding). abandoning VIDED ALSO, and it is hereby further declared, by and open mines. between the said parties to these presents, that in case the said C. D., his executors, &c., shall so abandon, relinquish, and give up the said mines and minerals hereby demised, pursuant to the power in him vested, under and by virtue of the proviso lastly hereinbefore contained, then, and in such case he, the said C. D., his executors, administrators, and assigns, shall and will, leave open all the said pits and shafts, which shall have been made and sunk in and upon the said closes of lands, for the use of the said A. B., his, &c., with all the bricks and curbs therein, with insets, built up in

In case of to leave

perfect order; and also with all the said shafts arched over with bricks, in a good, substantial, and workmanlike manner, at the expense, costs, and charges, of the said C. D., his executors, administrators and assigns.(b)

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AND the said A. B., for himself, his heirs, &c., Penceable doth hereby covenant, promise, and agree, to and enjoyment with the said C. D., his, &c., in manner following, that is to say, that he, the said C. D., his executors, &c., performing the several rents, royalties, and reservations, hereinbefore reserved and made payable, and reserving, performing, fulfilling, and keeping, all and singular the several covenants, provisoes, conditions, restrictions, and agreements, hereinbefore contained and expressed to be observed, fulfilled, kept, done, and performed, on his and their part and behalf, shall, and may peaceably and quietly have, use, occupy, possess, and enjoy the said mines of coal and brick clay, in and under the said closes, pieces, or parcels of land, and every the several powers, provisoes, and authorities, and other the premises hereinbefore mentioned, and intended to be hereby granted and

(b) Here was added a clause giving lessor the option to buy engines, on Lessor to lessee abandoning mines: "Provided also, and it is hereby further agreed have power and declared by and between the said parties to these presents, and to purchase it is the true intent and meaning of them and of these presents, that in engines. case the said A. B., his, &c., shall, upon such abandonment of the said mines, by the said C. D., his executors, administrators or assigns, and notice thereof, or at the expiration, or other sooner determination of the said term hereby granted, be minded and desirous to purchase all or any of the engines, whimseys, gins, or other erections, so to be built or erected in or upon the said demesne, waste wood, common lands, and premises, by him, the said C. D., his executors, &c., and authorised to be carried away or removed, or any of the ropes, rollers, or other movable implements, matters or things of and belonging to the said works or bridges, and of such his or their desire shall give three calender months' notice in writing, next before the term fixed for such abandonment, by such notice as aforesaid, or the expiration, or other sooner determination of this demise, unto the said C. D., his executors, &c., or leave the same for him or them, in his or their usual place or places of abode, then and in such case, it shall and may be lawful for the said A. B., his, &c., immediately upon such abandonment, or after the expiration, or other sooner determination of this demise, to enter upon, and take all or any such engines, whimseys, gins, bridges, ropes, rollers, implements, or other matters or things as aforesaid, as he or they shall think proper to purchase, on paying such price for the same, as shall in case of disagreement between the parties, be awarded by arbitration or umpirage, in the manner hereinbefore meutioned and expressed."

demised, and every part and parcel thereof, (except, as before excepted,) for and during the continuance of the said term of sixty years hereby granted, or intended so to be, determinable nevertheless as aforesaid, without any let, suit, trouble, eviction, ejectment, expulsion, interruption, hinderance, or denial whatsoever, of from, or by, the said A. B., his, &c., or any other person or persons whomsoever, lawfully or equitably claiming, or to claim, by, from, through, under, or Covenant to in trust for, him or them. And the said C.D., for himself, his heirs, executors, administrators, and assigns, doth hereby covenant and promise, and agree to and with the said A. B., his heirs, and assigns, in manner following, (that is to say,) that he, the said C. D., his executors, administrators, and assigns, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said A. B., his heirs or assigns, the several and respective rents, royalties, and sums of money hereby reserved, and made payable at or upon the several quarterly days and times, and in manner, and form hereinbefore in that behalf mentioned and appointed for payment thereof, respectively, and under, and subject to the several provisoes and restrictions hereinbefore contained, without any deduction or liability for taxes, or on any other

To pay LAXUS.

pay rent and

royalties.

And also shall and will pay, or cause to be paid, all and all manner of taxes, rates, levies, assessments,

account or pretence whatsoever. (c)

Quantity of coals to be raised.

(c) A covenant may be added on the part of the lessee, to raise a stipulated quantity of coals, thus: "And also, that he, the said C. D., his executors, administrators, and assigns, shall and will weekly, and every week during the term or period of six months, to be computed from the said 24th day of June, now next ensuing, work, get, and raise, from and out of the said mines, the quantity of fifty tons of large coal at least, in each and every week, during the continuance of the said last mentioned term of six months; so that thereby, the royalties and premises hereinbefore reserved, in respect of the said large coal, during the said period of six mouths, shall amount to the full and clear sum of —— at the least in each such quarter, exclusive of the said royalties hereinbefore made payable for slack, cokes, and brick. And also, that he, the said C. D., his executors, administrators, and assigns, shall and will weekly, and every week during the term of one year, to be computed from the said 25th day of December, work, get, and raise, from and out of the said mines, the quantity of one

and impositions, whatsoever, parliamentary or parochial, which now are, or which shall or may, at any time or times hereafter, during the continuance of the said term of sixty years hereby granted, be taxed, rated, charged, assessed, or imposed upon the said demised mines, minerals, and premises.

AND ALSO, that the said C. D., his executors, admi- To manage nistrators, and assigns, shall and will, during the con-workmantinuance of the said term of sixty years hereby grant-like manner ed, or intended so to be, in a good and workmanlike employ manner, according to the best, most approved, and sufficient workmen. customary mode of working, and getting mines in the neighbourhood of the like quality and description, uninterruptedly manage, work, get, raise, carry away, and sell, and dispose of all such mines of coal hereby demised, for or on account of such rents, royalties, or reservations, as are hereby reserved and made payable, or intended so to be, and for

hundred tons of large coals at least, in each and every week during the continuance of the said last mentioned term of three months, so that thereby the royalties and premises hereinbefore reserved, in respect of the said large coals, during the said last mentioned term or period of twelve months, shall amount to the full clear sum of £—— at the least, in each of such last mentioned quarters of a year, exclusive of the royalties hereinbefore made payable for such cokes and bricks. And also, Quantity to that he, the said C. D., his executors, administrators, and assigns, shall be rose. -, or until the said mines shall be completely worked out and exhausted, work, get, and raise, from and out of the said mines, the quantity of two hundred tons of large coal at least, in each and every week during the remainder of the said term, so that thereby, the royalties and premises hereinbefore reserved, in respect of the said large coals during the period last mentioned, shall amount to the full and clear sum of — at the least, in each and every such quarter of a year, exclusive of the royalties hereinbefore reserved and payable for slack, cokes, and bricks, or that he, the said —, his executors, administrators, and assigns, shall and will well and truly pay, or cause to be paid, unto the said A.B., his heirs and assigns, the said respective weekly quantities of large coals, during the three several periods last mentioned, so as to make the said royalties therefrom, (within the several periods last mentioned,) amount unto the several respective sums of money hereinbefore in that behalf mentioned and expressed, in each and every quarter, during the respective periods aforesaid, and the same to be paid and payable upon each and every of the said quarter days, or times of payment hereinbefore mentioned, although less quantities of the said large coals hereinbefore mentioned, shall or may happen to have been gotten and raised in each and every preceding quarter, upless such deficiency in the aforesaid specific every preceding quarter, unless such deficiency in the aforesaid specific quarterly quantities respectively shall have been occasioned by reason of any of the obstructions or reservations aforesaid."

that end and purpose, and to the intent that the said works shall, and may be continued, and carried on, with full and unabated vigour and effect, during the continuance of the said term, that he, the said C. D., his executors, administrators, and assigns, shall and will constantly during such term as aforesaid, engage, keep, and employ, in or about the same mines and works, a proper and competent number of good and skilful miners, colliers, workmen, servants, and labourers; and also of horses, cattle, carts, carriages, machines, utensils, tools, and other materials and articles proper and necessary to carry on the said mines and works, in such a workmanlike manner as shall tend to the mutual benefit. profit, and advantage, of the said A. B., and C. D., respectively, and shall and will work and get the said mines, by means of shafts, to be made and sunk in and upon the said lands and premises, and not by means of any other shafts in any adjoining lands.

Books to be kept as to large coal, and bricks, to be rose, made, and sold, and such books to be accessible to lessor.

AND FURTHER that he, the said C. D., his executors, administrators, and assigns, shall and will, alack, cokes, from time to time, and at all times during the continuance of the said term of ---- years hereby granted, keep or cause to be kept, on the said demised premises, fair, just, open, regular, and complete books of accounts in writing, of the several quantities of large coal, slack, cokes, and bricks, to be raised, gotten, made, sold, and disposed of, by him or them, from and out of the said mines and premises hereby demised, or intended so to be. the said books and accounts, shall at all times in the working hours of every day, Sunday excepted, be accessible and open to the inspection and examination of the said A. B., his heirs and assigns, as aforesaid, and his, and their agents, and clerks: and also that he and they, or any of their agents, clerks, stewards, inspectors, viewers or bailiffs, shall be at liberty to take copies thereof, or extracts therefrom, at all seasonable times.

AND FURTHER, that he, the said C.D., his execu-Covenant by

tors, administrators and assigns, shall and will, lessee to during the said term of sixty years, at all reasonable lessor to times, permit and suffer, and also aid and assist enter and inspect. the said A. B., his, &c., and his and their agents, viewers, inspectors, clerks, stewards, and bailiffs, whom it shall be lawful for the said A. B., his, &c., to employ and appoint to enter into the said lands, and to the mines, minerals, and premises, hereby granted and demised, or intended so to be, and the buildings and erections, shafts, pits, and works, to be made, erected, and sunk thereupon, in order to latch, view, search, and examine the repair, state, and condition of the same, and the manner in which the same are carried on.

AND ALSO, that he, the said C. D., his executors, administrators, and assigns, shall and will leave Lessee to open, and protect, and preserve with sufficient piles and protectand eyepillars, with inlets therein, built up with brick ed the pits and mortar, all the pits and shafts to be made and and shafts. sunk by him and them in and upon the said closes, pieces, or parcels of land, and premises, with the bricks and curbs therein for the use and benefit of the said A. B., his heirs and assigns, and shall not, nor will not, do or commit or suffer to be done or committed, any wilful act, matter or thing, whatsoever, which shall or may damage, hazard, or endanger the hereinbefore excepted mines, veins, seams, and other the excepted premises, or the future working thereof respectively, (save and except such acts as may be necessary for the working of the said demised premises).

AND ALSO, that he, the said C. D., his executors, administrators, and assigns, shall and will, once in Lessee to each and every quarter during the continuance of account of the said term hereby demised, that is to say, within slack, &c., to lessor. ten days, next in or upon each and every the day of, &c., the —— day of, &c., the —— day of, &c., the —— day of, &c., in each and every year during the continuance of the said term of sixty years, deliver or cause to be delivered to the said A. B., his heirs or assigns, or his or their agent or agents,

a true, perfect, and correct account, in writing, of all coals, slack, cokes, and bricks, that shall be got, raised, sold, or otherwise disposed of, from and out of the said demised lands, for the custody, perusal, and approbation of the said A. B., his, &c., without making any charge for the same. (d)

Covenant by (d) A covenant may be added by lessee not to assign or underlet the lessee not to premises, thus: "And further, that he, the said C. D., his executors, assign an administrators, and assigns, shall not nor will, during the said term here underlet.

by granted, or intended so to be, give, grant, demise, let, set, assign, at over, or otherwise part with this present indenture of lease, or the miss. minerals, and premises hereby demised, or any part thereof, or his er their estate, term, or interest therein, or any part of the same, unto any person or persons, whomsoever, save and except to a trustee or trustees for a wife, or child, or children, or to a partner or partners, without the special license and consent of the said A. B., his, &c., as aforesaid, first had and obtained under his or their hand or respective hands for that purpose. In witness, &c.

OBSERVATIONS AND CASES.

In the *Touchstone* it is said that, "Regularly Requisites in making these things must concur to the making of every of a lease. good lease. (e)

"1. As in other grants, so in this there must be A lessor. a lessor, and he must be a person able and not re-

strained to make that lease.

"2. There must be a lessee, and he must be A lessee. capable of the thing demised, and not disabled to receive it.

"3. There must be a thing demised, and such a Subject de-

thing as is demisable.

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"4. If the thing demised be not grantable without When by a deed, or the party demising not able to grant with- deed, and setting forth out deed, the lease must be made by deed; and if parties. so, then there must be a sufficient description and setting forth of the person of the lessor, lessee, and the thing leased, and all necessary circumstances, as sealing, delivery, &c. required in other grants, must be observed. (f)

"5. If it be a lease for years, it must have a cer-Commencetain commencement; at least, when it comes to take effect in interest or possession, and a certain determination, either by an express enumeration of years, or by reference to a certainty that is expressed, or by reducing it to a certainty upon some contingent precedent by matter ex post facto, and then the

(e) 8re Sheppard's Touchstone, p. 267.

(f) A lease, as in other deeds or grants, usually consists of the following Lease. parts, namely:-

1. What is usually called the premises, which contains a statement of Premises. the date, the parties, and the parcels or premises, being that part which precedes the habendum.

2. The habendum or tenendum, or that part of the lease which begins Habendum. with, "To have and to hold," and properly succeeds the premises, and it

fixes the duration of the term.

3. The reddendum or reservation whereby the lessor reserves the rent, Reddendum and is usually made by the words, "Yielding and paying."

4. The covenants.

And lastly, any exception, proviso, or condition, there may be to the Proviso. contract.

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contingency must happen before the death of the lessor or lessee.

Ceremonies.

"6. There must be all needful ceremonies; as, livery of seizin, attornment, and the like, in all cases where they are requisite.

Acceptance by lessec.

"7. There must be an acceptance of the thing demised, and of the estate, by the lessee. whether any rent be reserved upon a lease for life, years, or at will, or not, is not material, except only in the cases of leases made by a tenant in tail, husband and wife, and ecclesiastical persons."

Construction of leases as to their operation.

In the construction of leases regard must be had to all their parts; and general words may be restrained by a particular recital contained therein. If a deed operates two ways, the one consistent with the intent of the party, and the other repugnant to it, the courts will put such a construction on it as to give effect to such intent, which is to be gathered from the whole instrument. (q)

Where words are omitted.

Where a material word appears to have been omitted in a lease by mistake, and other words cannot have their proper effect unless it be introduced, such lease must be construed as if that word were inserted, although the passage where it ought to stand conveys a sufficiently distinct meaning without it.(h)

The word "term" in n lease. Usual covenants.

The word "term," in a covenant in a lease, may signify either the time or the estate granted. (i)

What are usual covenants in a lease is a question of fact for the jury, and not a question for the construction of the court. (j)

Memoran. dums in leases.

Where a memorandum was subscribed under a lease providing as to payment of the rent to an intermediate lessee during part of the term, and afterwards to the original lessee, during other part of the

Construction.

(g) Solly v. Forbes, 4 Moore, 448; and see 1 T. R. 638. For deeds may be construed so as to operate according to the intention of the parties, if by law they may; and if they cannot operate in one form they shall in another, which, by law, will effectuate the intention of the parties—Goodtitle d. Edwards v. Bailey, Cowp. 600.

(h) Wight v. Dickson, 1 Dow. 141, 147.

(i) Evans v. Vaughan, 6 D. & R. 349. 4 B. & C. 261.

(j) Bennet v. Womack, 3 C. & P. 96. S. C. 1 M. & R. 644. 7 B. & C. 697.

term, if his interest should so long continue, and that the new lessee, his executors, administrators, and assigns, should have liberty to quit a part of the premises at any time during the term, upon giving twelve months' notice; it was held that the lease and memorandum must be taken together, and construed as one entire instrument; and that the intention of the parties expressed by both, was to extend the habendum beyond the term of the life of the lessee, and give him a lease for thirty-seven years, determinable on the death of the lessor. (k)

A lease for two thousand years is not to be con- Terms of long durastrued as a lease, but merely as a term to attend the tion.

inheritance. (l)

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No parol evidence can be admitted to explain an Parol evidence. agreement where there is no latent ambiguity. (m)

An expired lease may be presumed to have been Expired destroyed, where reasonable diligence has been lease. unsuccessfully used to procure its production. (n)

(k) Weak d. Taylor v. Escott, 9 Price, 595. In this lease it was recited Constructhat A., one of the lessors, was an original lessee for the term of his tion. natural life, and that B., the other, was a person to whom A. had granted a lease for a term of years certain, seven of which would remain unexpired on the 29th of September following the date thereof. A. and B. demised to the lessee the premises from the 29th day of September, for and during the two several terms thereinbefore mentioned, (the rent to be paid to both the lessors, and their respective executors,) if the lessee should so long live, and the term and estate of the original lessee should so long continue.

(1) Denn d. Bargwell v. Barnard, Cowp. 595.
(m) Doe d. Spicer v. Lea, 11 East, 312. In this case, A. being tenant Constructo B. under a lease containing covenants by which the former was bound tion. to fetch a certain quantity of coals (seventy-five bushels) yearly from a place named, and deliver them at the mansion house of the latter; and also to supply him with as much good wheat as he should want in his family at a certain price (five shillings per bushel); it was agreed between them that the lease should be surrendered up, and a new one granted, omitting the above covenants; and a new lease was accordingly executed, and at the same time an agreement entered into whereby A. agreed with B. that he would fetch and bring to the dwelling house of B., his heirs and assigns, seventy-five bushels of coals yearly, for twelve years, (the term of the new lease,) and yearly supply B., his heirs and assigns, with as much good wheat as he should want in his family, at five shillings per bushel. B. (the lessor) having parted with his reversion in the farm, and also quitted the mansion house in which he resided at the time when the agreement was made; it was held that he was not entitled to maintain an action against A., (the lessee,) for refusing to deliver the wheat at the stipulated price; for, that the agreement being entire, must receive one uniform construction; and as it was clearly local in respect to the delivery of coals, it could not be deemed personal with respect to the wheat.—Coker v. Guy, 2 B. & P. 565.

(n) Doe d. Manton v. Austin, 2 M. & Scott, 107. The production of production the counterpart of an old lease, coupled with evidence of the payment of

Demise for life.

A demise by A. to B. for the term of his natural life, may enure as a demise, either for the life of A. or of B., according to circumstances. (o)

Memorandum in mar-

It was held that a memorandum written in the gin of draft. margin of a draft of a lease, whereby the tenan: engaged to pay rent for the preceding half quarter. admissible in evidence for the purpose of

negativing a plaintiff's claim. (p)

Printed forms for leases.

A printed instrument, purporting to be a form of a demise of a farm, had originally contained in the habendum words creating a tenancy from year to year; but on producing the instrument in evidence, they were found to be struck through, and were proved to have been so struck through before the execution of the instrument by the party charged. The remaining words of the demise were, "For the term of one year, fully to be complete and ended," and stood immediately preceding those which had been struck out. However, many subsequent stipulations remained in the lease, which seemed to be only applicable to a tenancy not longer than a year, or determinable by notice to quit; it was held, first, that the words struck through might be looked at to ascertain the real intention of the parties in so erasing them, and consequently that the tenancy was for one year only; and next, that the stipulations inapplicable to such a tenancy, must be considered as struck out.

of counterpart.

rent to the lessee by his undertenants for a number of years, is sufficient evidence of the lessee's interest under such lesse.—Id. (The estate of the lessee is not determined by the loss of the lease, so that the existence of the term can be proved, for the estate is derived from the lessor, and not from the lessee, otherwise than as it shows the intention of the parties, which w not altered by the loss of the instrument of demise. - Read r. Brookman, 3 Term Rep. 351.

Habendum.

(o) Doe d. Pritchard v. Dodd, 2 Nev. & M. 838. 5 B. & Adol 69. Semble, that if the habendum be to B., his executors, administrators, and assigns, a presumption is created in favour of a devise for the life of A.—

Id. Such a presumption is confirmed by a covenant by A. with B, for quiet enjoyment during the life of A .- Id. Such a covenant per se would amount to a demise.—Id.

Over payment to landlord.

(p) Cowne v. Garment, 1 Scott, 275. 1 Bing. N. R. 318. action of assumpsit for money had and received, to recover back a sum alleged to have been overpaid by a tenant to his landlord, upon a settlement between them, in relation to a distress for arrears of rent, where a appeared that the defendant held the premises under a lease from Michaelmas, 1832. Semble, that assumpsit was the proper form of action, and not case for an excessive distress. - Id.

or as surplusage, unless the tenancy should continue for more than a year.(q)

If, under a parol demise for more than three Parol deyears, void by the statute of frauds, the lessee mise. enters and becomes tenant from year to year, he is bound by an undertaking to repair contained in such void demise.(r)

A lease from a certain day commences on the Commencenext day.(s) The words, "From the day of the duration of date," mean either inclusive or exclusive, accord-term. ing to the context and subject matter; and the court will construe them so as to effectuate the intention of the parties.(t) A lease of lands by deed, to hold from the feast of Saint Michael, must be taken to mean from New Michaelmas, and cannot be shown by extrinsic evidence to refer to a holding from Old Michaelmas. (u) A lease for one year, and so on two or three years, as the parties shall agree, means for two years; and, after every subsequent year begins, is not determinable till that be ended. (v)lease for years, if the lessee so long live, with a remainder, to another for the residue of the term, must be construed to give the remainder man a power to enjoy during all the residue of the years to come.(w) A general parol demise at an annual rent, where the bulk of the farm is enclosed, and a

(r) Richardson v. Giffard, 3 Nev. & M. 325. 1 Adol. & Ellis, 52.

(s) Loff, 275.

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(t) Pugh v. Leeds (Duke), Cowp. 714.

(w) Wright d. Arm v. Cartwright, I Burr. 282. 1 Ld. Ken. 529.

⁽q) Strickland v. Maxwell, 2 C. & M. 539. 4 Tyr 346. By the same Way-going instrument of demise, after a covenant for payment of rent by the tenant, crop and it was agreed, "that in case the tenant should duly observe and perform right of posthe several covenants and agreements thereinbefore contained on his part session of and behalf," and should peaceably quit the farm in pursuance of notice to out-going do so, he should be entitled to away-going crop, to be taken from lands in tenant. seed or turnips the previous summer; such crop being to be left for the landlord, or his in-coming tenant, at a valuation to be made by arbitrators or an umpire; it was held that this clause did not give the tenant the right of possession of the land to the exclusion of the landlord, after the determination of the year's tenancy, but at most only a right to go on the land to improve the crop, and that the landlord might maintain trespass, quare clausum fregit, for taking possession of the crop, and hindering him from having the use and occupation of the land after the year was expired.—Id.

⁽u) Due d. Spicer v. Len, 11 East, 312.
(v) Harris v. Evans, 1 Wils 262. Amb. 329. But it is a lease for one Lease for year only without such subsequent agreement.—Id. one year.

small part in the open common fields is only a lease from year to year, and not for so long as the usual round of husbandry extends.(x) Demise of freehold and copyhold lands at an entire rent, habendum as to so much as was freehold for twenty-one years, and so much as was copyhold for three years, warranted by the custom and a covenant for the renewal of the lease of the copyhold every three years, toties quoties, during the twenty-one years under the like covenants; and that in the mean time, and until such new leases should be executed, the lessee should hold the said land, as well copyhold as freehold; it was held that this was only a lease of the copyhold for three years, and that the lessor after the three years might recover the premises in ejectment against the lessee, there not having been any fresh lease granted.(y)

A lease to A. B., his executors, &c., for a year, and so on from year to year, so long a time as it shall please the lessor, and A. B., his executors and administrators, does not expire on the death of

A. B., but vests in his executors. (z)

Optional number of years.

A lease for seven, fourteen, or twenty-one years, as the lessee shall think proper, is a good lease for seven years, whatever it may be for fourteen or twenty-one years. (a) Lease of lands by indenture for twenty-one years, with a proviso that it should be determinable by lessee or lessor, at the end of the first seven or fourteen years, a memorandum indorsed six years after the execution of the lease, "of its being agreed between the parties previously to the execution, that the lessor shall not dispossess, nor cause the lessee to be dispossessed, of the said estate, but to have it for the term of twenty-one years from this present time;" which

Limited demise.

⁽x) Roe d. Bree v. Lee, 2 W. Black. 1171. Upon a demise "until Michaelmas next, and no longer," with the privilege of using part of the premises for specific purposes till Lady Day following, ejectment may be brought for those parts to which the privilege does not extend in the interval between Michaelmas and Lady Day.—Doe d. Walters v. Haughton, 1 M. and R. 208.

⁽y) Fenny d. Eastham v. Child, 2 M. & S. 255. (z) Mackay v. Mackeeth, 4 Doug. 213. 2 Chit. 461. (a) Ferguson v. Cornish, 2 Burr. 1032. 3 T. R. 463, s.

memorandum was signed by the parties, and stamped with a lease stamp, but not sealed; it was held that the lessor might notwithstanding determine the lease at the end of the first fourteen years, for the memorandum did not operate as a new lease, and surrender of the first lease. (b)a lease be granted for seven, fourteen, or twentyone years, the lessee only has the option at which of the above periods the lease shall determine. (c)A proviso in a lease for twenty-one years, that it might be lawful for either party, his executors or administrators, to determine the lease on notice to the other, his heirs, executors, or administrators, extends to the devisee of the lessor.(d) there was an agreement that a tenant should be at liberty to quit at Lady Day, in which case the landlord engaged to take the fixtures at a valuation, or to permit the tenant to let the house; it was held that the construction of this agreement was, that the tenant had an option in the event of quitting.(e)

Under a demise of a messuage with all rooms Premises. and chambers, with the appurtenances thereto belonging, is to be understood, all that is occupied together as an entire messuage, at one and the same time; therefore, such a demise will not comprehend a room which had once formed part of the messuage, but which had been separated from it by means of a wooden partition, and had not been occupied with it for many years previous to the demise.(f) Under a lease of premises, "together with all ways appertaining, or with any parts thereof used or enjoyed," a right of way was held to pass, although not expressly mentioned upon

⁽b) Goodright d. Nicholls v. Mark, 4 M. & S. 30.
(c) Dann v. Spurrier, 3 B. & P. 399, 442. 7 Ves. jun. 231. S. P. Price Construct.
v. Dyer, 17 Ves. jun. 363. So where the lease was for fourteen or seven tion of years, on the ground that every doubtful grant must be construed in grant. favour of the grantee.—Doe d. Webb v. Dixon, 9 East, 16.
(d) Roe d. Bamford v. Haley, 12 East, 464.
(e) Colton v. Lingham, 1 Stark. 39. And a letting by the tenant to an Right of undertenant until Lady Day, is not an exercise of his right of option. option.

⁽f) Kerslake v. White, 2 Stark. 508.

proof that it was used with the premises at the time

the lease was granted. (g)

Lease for lives. (Validity.)

A lease for lives, to begin from the day of the date thereof, with seizin delivered afterwards, is good, and shall not be said to convey a freehold to commence in futuro.(h) Where there is a demise of premises, and an entire rent reserved, if any part of the premises could not be legally demised, the whole is void.(i) Lease of lands in which lessor was seized in fee, and of other lands of which he was seized for life, (with a power of leasing,) at one entire rent, and the lease not well executed according to the power; it was held that the lease was good after the death of lessor for the lands in fee, though not for the other lands, for the rent may be apportioned.(j) In an action of debt for rent, where the title to the land is not in question, the defendant is estopped from saying the lease is not a good one; as, that being a lease for lives, it could not be granted without livery of seizin, or by lease and release, or bargain and sale; and that being a lease of a freehold, it could not commence is futuro; for let the lease be what it will, the covenant is good; and if otherwise, the tenant might enjoy the land, and yet the landlord have no remedy for his rent. (k) A lease was granted in pursuance of an agreement between A. and B., by which "A. agreed to let her house to B. during her life, supposing it to be occupied by B., or a tenant agreeable to A.;" and a clause was to be added in the lease to give A.'s son an option to possess the house when of age; it was held that such lease only enured for the joint lives of A. and B.(1)

Lease by tenant in tail.

⁽g) Kooystra v. Lucas, 1 D. & R. 506. 5 B. & A. 630. But see Harding v. Wilson, 3 D. & R. 287. 2 B. & C. 96. Morris v. Edginton, 3 Taust.

^{24.} Crisp v. Price, 5 Taunt. 548.
(h) Freeman d. Vernon v. West, 2 Wils. 165.
(i) Doe d. Griffiths v. Lloyd, 3 Esp. 78. And if a tenant in tail reserves an entire rent upon a farm in which some leasehold lands are mixed with the entailed lands, the lease is not good against the reversioner.—Recee

d. Perkins v. Phillips, Wightw. 69.

(j) Doe d. Vaughan v. Meyler, 2 M. & S. 276.

(k) Monroe v. Kerry (Lord), in error, 1 Bro. P. C. 67.

(l) Doe d. Bromfield v. Smith, 6 East, 530. 2 Smith, 570. 2 T. & R

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If a man enter under a void lease and pay rent Void lease. he is not a disseiser, but a tenant at will. (m) agreement for a lease at a certain rent, containing a stipulation, that they should not turn out the tenant so long as he paid the rent and did not sell, &c., any article injurious to the lessor's business, either purports to be a lease for life, and would then be void, as being creatable by parol, or if it operate as a tenancy from year to year, it must necessarily be determinable by either party giving the regular notice to quit.(n) Tenant for life leases premises for twenty-one years, and before the expiration of that term dies; the trustees of the remainder man, then an infant, continue to receive the rent reserved, and he, on coming of age sells the premises by auction; in the conditions of sale the premises are declared to be subject to the lease, and in the conveyance to the purchaser the lease is referred to as in the possession of the lessee, and in the covenant against incumbrances the lease is excepted; the purchaser mortgages, and in the morgage deeds the like notice is taken of the lease, and the mortgagees for some time receive the rent reserved:— Held that the lease expired with the interest of the tenant for life, and that the notice since taken of it did not operate as a new lease.(0)

Although, generally, the acceptance of rent by a Confirmaperson who is entitled to set aside a lease will con-

436. A tenancy from year to year of glebe land, is determined by the death of the incumbent.—Doe d. Kerby v. Carter, R. & M. 237.

(m) Denn d. Warren v. Fearnside, l Wils. 176. So a parol agreement Parol

to lease lands for four years only, creates a tenancy at will.—Goodtitle agreement. d. Gallaway v. Herbech, 4 T. R. 680. So where one enters under a void Receipt of lease by a tenant for life, and after his death the remainder man receives rent.—Doe d. Martin v. Watts, 7 T. R. 83. 2 Esp. 501; and see Ladford v. Barber, 1 T R. 86. Yet if the remainder man receives money as rent Receipt by after the death of the tenant for life, it is an admission of a tenancy from remainder year to year, Id., and in such case the tenant holds under the terms of man. the lease in all other respects, except the duration of time.—Doe d. Rigg v. Bell, 5 T. B. 471.

(a) Doe d. Warner v. Brown, 8 East, 166.
(b) Doe d. Potter v. Archer, 1 B. & P. 531; and see Roe d. Jordan v. Covenant.

Ward, 1 H. B. 97. In the conveyance of an estate there was a covenant. that the premises were free from incumbrances except particular leases, quære whether these words affirm the leases, and whether parol evidence is admissible to show that it was so intended.—Doe d. Mount v. Roberts, 4 Doug. 306.

Tenant in tail.

firm it.(p) Yet acceptance of rent by a tenant in tail on coming into possession, is no confirmation of a lease made by a tenant for life, which is absolutely void at his death.(q) A lease executed by a tenant for life, in which the reversioner who was then under age, is named, but not executed by him, is void on the death of the tenant for life, and an execution by the reversioner only afterwards, is no confirmation of it so as to bind the lessee in an action of covenant.(r) Where the heir of a tenant in tail received, for ten years, rent under a demise for ninety-nine years granted by his ancestor, it was held a confirmation of the lease.(s) Defendant came into possession under a lease from a tenant for life, whom the lessor of the plaintiff succeeded as remainder man; a money rent was to be paid, and by a further reservation the tenant was to carry or cause to be carried three cart loads of culm vearly, to the landlord's dwelling house. At the trial, this lease was objected to as invalid, but it appeared that the lessor of the plaintiff at the Michaelmas after the tenant for life died, told his servant to go and look for carts to bring the culm home. servant went to the tenants, and among others to the defendant, who accordingly brought a load of culm to the dwelling house; other persons who were tenants doing the same. On the following May day defendant sent her two other cart loads of culm to the house, where it was received; other loads being sent in by the tenants at the same time. The jury found that the culm was carried by and received from the defendant in the way of rent, under the eservation:-It was held that such finding was

Void lease.

Estoppel.

⁽p) Doe d. Jelliffe v. Sybourn, 2 Esp. 667.

⁽q) James d. Aubrey v. Jenkins. Bull, N. P. 96. Nor can a lease which is void against a remainder man, be set up by his acceptance of rent, and suffering the tenant to make improvements after his interest vests in possession.—Doe d. Simpson v. Butcher, I Doug. 50.—S. P. Jenkins d. Yste

v. Church, Cowp, 482.

(r) Ludford v. Barber, 1 T. R. 86.—8. P. Doe d. Martin v. Watts, 7 T. R. 83. 2 Esp. 501, but quære how far the lessee would have been estopped if the lessor had not himself shown by his declaration, that the lease was not executed by the reversioner until after the death of the tenant for life. Id. (s) Doe d. Southouse v. Jenkins, 5 Bing, 469. 3 M. & P. 59.

grounded on sufficient premises, and that allowing the lease to be void the receipt of culm under the above circumstances, was a recognition of the defendant as tenant from year to year. (t)

By the statute 13 Elizabeth, c. 10, s. 3, "All Leases by leases made by spiritual persons other than for persons.(w) the term of twenty-one years or three lives,

(t) Doe d. Tucker v. Morse, l B. & Adol. 365.
(a) All persons having only partial interests as tenants for life, by the Tenants for curtesy, in dower, by elegit, statute merchant or statute staple, may grant life. leases during the continuance of their respective estates, but no longer unless under a power. And no act of the parties will make a lease good after the death of tenant for life, unless it should appear to be plainly the intention to make a new grant. - Doe v. Butcher, Doug. 50. - Doe v. Archer, 1 B. & P. 531; but under some circumstances, equity will compel a remainder man to execute a new lease to the tenant. Stiles v. Cowper, 3 Atk. 692. If tenant for life, and he in remainder join in a lease for years by deed, this shall be the lease of tenant for life, during his life, and the confirmation of him, in remainder or reversion, and after his decease it shall be the lease of them in remainder or reversion, Co. Litt, 45, (a).

Under the statute 32 Hen. VIII., c. 28, tenants in tail are enabled Tenants in

to make leases for three lives, or for twenty-one years, to commence from tail. the making thereof, provided the accustomed yearly rent within the last twenty years, next before such lease be reserved. Such leases will be binding on the issue, but not on those in remainder or reversion. Co. Litt. 456. They must likewise contain all such beneficial clauses and reservations as the remainder man is entitled to have, so that the estate may come to him in as beneficial a manner as ancient owners held it.

Taylor v. Horde, 1 Burr. 121.

A feme covert cannot make a valid lease of her lands except under a Feme power, or unless it be made by her and her husband under the 32 Hen. covert. VIII., c. 28.

Although a person of unsound mind can generally do no binding act, Lunatics yet by the 1 W. IV., c. 65, s. 24, the committee of a lunatic may make leases under the direction of the Lord Chancellor.

Joint tenants, tenants in common, and co-parceners, may either make Joint leases of their own respective parts, or else all may join in a lease to a tenants, & . stranger. Co. Litt. 185. a. If parceners or joint tenants join in a lease this shall be but one lease, for they have but one freehold; if tenants in common join in a lease this shall be the several lease of each of their respective interests. Co. Litt. 45. a. 2 Roll, abr. 64

Neither a mortgagor nor a mortgagee can make a lease to bind the Mortgagees.

other without his concurrence.—Keech v. Hall, Doug. 21. (See p. 93.)

A copyholder cannot, except by special custom in the license of the Copyholder. land, demise his lands for longer than a year without incurring a for-feiture.—Melwich v. Luter, 4 Co. 26.—Lady Montague's case, Cro. Jac., 301. So having a license to lease he must pursue his license strictly, otherwise the lease is void —Com. Dig. tit., copyholder. And a lease by parol or to commence in futuro will incur a forfeiture.- East v. Harding, Cro. Eliz., 498.

Executors and administrators, unless restrained by the leases granted Executors. to their testators, may grant underleases, and the rent reserved will be assets in their hands.—6 Co. 67., Bac. abr., leases.(c. 7.)

A guardian in socage, or a testimentary guardian, cannot make a lease Guardians. of his wards land.—Roe v. Hodgson, 2 Wils, 129, 135, unless it be limited to the term of his minority.—2 Roll, abr. 41.

Ecclesiastical persons and elermosynary corporations, may by the Ecclesiasabove mentioned statute, 32 Hen. VIII., make leases subject to the same tics. restrictions. The 5th G. III., c. 17, also authorises ecclesiastical persons to grant leases of incorporal hereditaments. Leases by beneficed clergymen are

whereupon the accustomed rent or more shall be reserved are void.(v)

Colleges.

Leases by governors of colleges in Ireland, must reserve more than a moiety of the true value, at the peril of the lease. (w)

Hospital lease.

A new lease made by the warden and poor of an hospital under their corporation seal, before the expiration of a former lease to a lessee, who had then only a part interest in the first lease, but to whom the entire interest was assigned, within three years afterwards is binding on the succeeding warden and the poor of such hospital. (x)

Churchwardens.

Churchwardens only cannot execute leases as a body corporate at parish lands, under 59 Geo. III., c. 12, s. 17.(y)

Lease by mortgagee, and the re-

Where by a lease a mortgagee demised, and the executrix of mortgagor demised and confirmed, and

13 Eliz. c. 20 restrained in case of non-residence by the statute of 13 Eliz. c. 20, (mentioned in the text,) and other statutes which were repealed were revived by the 57 G. III., c. 99.

Aliens.

Aliens are prohibited by 32 Hen. VIII., c. 16, s. 13, from acquiring real property; but an alien may after naturalization or denization, make valid leases of lands.

Trustees of charities.

Leases of charity lands are under the peculiar cognizance of the court of chancery. Where the mode of granting leases is prescribed by the founder the terms must be strictly adhered to, otherwise the lease cannot be supported.—Att. Gen. v. Griffiths, 13 Ves. 565. But where there is no power the trustees must be guided by the general principal of the court.
—Att. Gen. v. Owen, 10 Ves. 555.—Att. Gen. v. Cross, 3 Mer. 540.

Leases

When a power is given to make leases it must be strictly pursued, for if made under all the requisites as to the number of years, its taking effect in possession powers.

or reversion, reservation of rent and the like, be not carefully observed, the lease will be void at law against the remainder man.—Shep. Touch. 269.—Pulteney v. Lady Cavan, 5 T. R. 567. (And see provisoes and refdendums.)

Assignees.

Assignées of bankrupts and insolvent debtors are authorised to execute for the benefit of the creditors all powers vested in any bank-

rupt or insolvent debtors of granting leases and the like.

Leases

(v) To render a lease valid under this statute it must be made of land under the which has been previously let, or in which some rent has been reserved; stat. 13 Eliz. therefore a lease by a vicar for three lives of uninclosed and waste land. not proved to have been before let, was held not to be binding on his successor, although the lessee covenanted therein to inclose the land and pay a rack rent for it; it was also held that the statute 32 Hen. VIII., c. 28, and the statute 13 Eliz., c. 10, was now in pari materia, and must be taken together.—Doe d. Tennyson v. Yarborough (Lord), 7 Moore, 258. 1 Bmg. 24. A lease by a rector of his glebe lands and other rectorial property made between the years 1803 and 1816, while the statute, 13 Eliz., c. 20, continued repealed is valid.—Doe d. Coates v. Somerville, 9 D. & R. 139. 6 B. & C. 126.

(w) Clements v. Waller, 4 Burr. 2154. (x) Grumbell v. Roper, 3 B. & A. 711.

(y) Phillips v. Pearce, 8 D. & R 43. 5 B & C. 433.

a power of re-entry was reserved to them or either presentaof them; it was held that it operated as the demise mortgagor. of the mortgagee and the confirmation of the mortgagor's representative. (z)

An agreement for a lease made with an agent, Agent. who acts under a power of attorney, and a lease executed by such agent in pursuance of the agree-

ment, effectually binds the principal.(a)

The right of renewal is forfeited by the latches.

of the tenant. (c)

A covenant in a lease to renew under the same Covenant covenant is exclusive of the covenant for renewal. (d) for renewal.

A promise by letter to renew a lease in considera- Letter. tion of money already laid out by the tenant is nudum pactum, and no specific performance will be decreed; nor is it varied by money having been laid out afterwards. (e)

A. demised to B., for the life of the said B.; and Perpetual also for the lives of C. and D., and covenanted that renewal. if the said B., his heirs, &c., should be minded at the decease of the said B. C. and D., or any of them,

(b) By the 4 Geo. II., c. 28, s. 6, chief leases may be renewed without Surrenders. surrendering all the underleases.

(c) Baynham v. Guy's Hospital, 3 Ves. Jun. 295. The assignee of a Latches as lease for lives which contained a covenant for renewal upon the drop- to renewal. ping of any life, provided application were made within six months, having omitted, upon the death of one of the cestus que vies, to apply for a renewal within the six months, filed his bill, praying relief upon the ground that he did not within six months know that the person was dead, or that the deceased was one of the cestui que vies, named in the lease. The bill was dismissed with costs, because the plaintiff might have known the facts if he had used reasonable diligence and acted with ordinary prudence.—Harris v. Bryant, 4 Russ. 89. (The Court leans against a construction for perpetual renewal, unless clearly intended. Id. For on the construction of a covenant for renewal under the like covenants, held that it was not for perpetual renewal.—Moore v. Foley, 6 Ves. jun. 232. But a contract for perpetual renewal will be specifically executed if clearly appearing, but is not to be inferred from a general provision for clearly appearing, but is not to be inferred from a general provision for similar covenants. The construction of such a covenant is the same in equity as at law, and is not to be affected by the acts as of the parties.—
Ignilden v. May, 9 Ves. jun. 325. 7 East, 237. 3 Smith, 269. 2 N. R. 449.)

(d) Tritton v. Foote, 2 Cox, 174. 2 Bro. C. C. 636. (e) Robertson v. St. John, 2 Bro. C. C. 140.

⁽z) Doe d. Barney v. Adams, 2 C. & J. 232. 2 Tyr. 289.
(a) Hamilton v. Clauricarde, (Earl) 1 Bro. T. C. 341. But if a man Agent's describe himself in the beginning of an agreement to grant a lease as responsimaking it on behalf of another, but in a subsequent part of it say that he bility.

will execute the lease he is personally liable.—Norton v. Herron, 1 C. & P. R. & M. 229.

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to surrender the said demise and take a new lease. and thereby add a new life to the then two in being, in lieu of the life so dying, that then the said A., his heirs, &c., upon payment for every life so to be added in lieu of the life of every one of them so dying, would grant a lease for the lives of the two persons named in the former lease, and of such other person as the said B., his heirs, &c., should appoint in lieu of the person named in the preceding lease, as the same should respectively die under the same rent and covenants. There had been successive renewals from the time of a former lease granted by the ancestor of A., and in each, a like covenant for renewal; held that A. and his ancestors, had by their own acts, construed this to be a covenant for a perpetual renewal.(f)

Renewal.

If a lease for ninety-nine years, determinable on three lives, be conveyed in trust for A. for life, and a covenant to use his utmost endeavours as often as any of the persons, on whose lives the premises are held, shall die, to renew the same by purchasing of the lord of the fee a new life in the room of such as shall fail, it is no breach of the covenant if, upon one of the lives failing, he procure a renewal upon his own life. (g)

Covenant to repair.

Breach of covenant

A general covenant to repair is satisfied by the lessee keeping the premises in substantial repair; a literal performance of the contract is not to be required.(h) If a door way be broken through the wall of a demised house into an adjoining house, and kept open for a long space of time, it amounts to a breach of covenant to repair. (i) Enlargement of windows, opening external doors, and taking down partitions; held no breach of a covenant, to repair and to keep in repair a dwelling house, together with all such buildings, improvements, or additions, as should be erected, set up, or made by

⁽f) Cook v. Booth, Cowp. 819. (g) Soudamore v. Stratton, 1 B. & P. 455. (h) Harris v. Jones, 1 M. & Rob. 173. (i) Doe d. Vickery v. Jackson, 2 Stark, 293.

the lessee.(j) A covenant by a lessee that he will Repairs of during the term, repair, uphold, support, sustain, and maintain the brick walls, to the demised premises belonging, is broken if the lessee during the term pull down a brick wall which divides the court yard at the front of the house from another yard at the side of the house.(k) Under a cove-Repairs to nant that the tenant "should and would substan-house. tially repair, uphold, and maintain" a house, he is bound to keep up the inside painting. (1) A cove-Building nant in a building and repairing lease, to leave the demised premises with all new erections well repaired extends to the new erections only.(m) lessee covenanted within the two first years of the term, to put the premises in good and sufficient repair, and at all times during the term, to repair, pave, scour, cleanse, empty, and keep the messuages, ground, and other the premises, when, where, and as often as need should require; and within the first fifty years of the term to take down four messuages as occasion might require, and in the place thereof erect upon the demised premises four other good and substantial brick messuages. It was held that if within the fifty years the houses should be so repaired as to make them completely and substantially as good as new houses, the covenant would be satisfied without taking down the old houses.(n) An agreement to leave a farm as he found it is an (See p. 70.) agreement to leave it in tenantable repair, if he found it so, and will maintain a declaration so laid.

Upon a covenant to repair and keep in repair Breaches. during the continuance of the term, an action may be maintained for breaches committed before the

term has expired.(o)

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Upon a covenant to use on demised premises all Covenants dung, straw, soil, compost, ashes, and manure, (express) made thereon, a breach is assigned in not using on bandry.

(j) Doe d. Dalton, v. Jones, 1 Nev. & M. 6. 4 B. & Adol. 126.

⁽k) Doe d. Weathrall v. Bird, 6 C. & P. 195.
(l) Mark v. Noyes, 1 C. & P. 265.
(m) Lant v. Norris, 1 Burr. 287.
(n) Evelyn v. Raddish, 7 Taunt. 411. s. c. Holt, 543.

Expending on premises dung, &c.

the demised premises all dung, straw, soil, compost, ashes, and manure; plca, that the defendant did not take away the said straw, compost, ashes, and manure. A verdict being found for the plaintiff, upon the supposed insufficiency of the plea, without the production of evidence, the court refused to enter a non-suit, or direct a new trial (p)

Consuming hay on premises.

A tenant was bound either to consume the hay on the demised premises, or for every load of by removed, to bring two loads of manure. On quitting possession of the premises he sold part of a rick of hay, then left standing to a purchaser, without mentioning his liability to bring manure. in-coming tenant refused to allow the purchaser to take away the hay until the manure was brought After an interval of a month, during which time the hay had been considerably damaged, the latter consented that it should be removed; the purchaser, however, then refused to accept or pay for the same; it was held that, although the bringing on the manure was not a condition precedent to the carrying off the hay, as between the landlord and tenant, still, that after the tenant had quitted possession of the premises, the succeeding tenant had a right to refuse permission for the hay to be removed till after the manure was brought on; and that, " the vendor had not enabled the purchaser to remove the hay in the first instance, he was not entitled to recover the price.(q)

Manuring

A covenant by the lessee that he would suffi-

Breach.

(p) The proper course seems to be, to enter a verdict for the defended upon the breach, with an assessment of damages as to the soil; or, grantally, as to the premises in the breach not covered by the plea.—See Marrack v. Ellis, 1 M. & R. 511.

Manure.

(q) Smith v. Chance, 2 B. & A. 753. A tenant held under the terms of an expired lease, by which it was stipulated that the tenant, on quiting the farm, should not sell or take away any of the manure in the fold, has should leave it to be expended on the land by the landlord, or his seconding tenant; the lease contained no stipulation as to the tenant heigh entitled to payment for such manure. By the custom of the country the tenant would have been bound not to sell or take away the manure is the fold, but to leave it to be expended on the land by the landlord, or his seconding tenant, and would have been entitled to be paid for the subject, the custom was excluded, and that the tenant was not entitled to be paid to the manure.—Roberts v. Barker, 1 C. & M. 808. 3 Tyr. 945.

ciently muck and manure the land demised with land within two sufficient sets of muck, within the last six years period. of the term, the last set to be laid on the premises within three years of the expiration of the term, is satisfied by the tenant's laying on two sets of muck within the three last years of the term, if he should

think proper so to do.(r)

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Where an agreement between an out-going and In-coming an in-coming tenant was, that the latter should buy the hay, &c., of the former upon the farm, and that the former should allow to the latter the expense of repairing the gates and fences of the farm, and that the value of the hay, &c., and of repairs, should be settled by third persons; it was held, that the balance settled to be due to the out-going tenant for his hay, &c., after deducting the value of the repairs, might be recovered by him in a count upon a general indebitatus assumpsit, for goods sold and delivered after having failed upon his count on the special agreement, for want of including in it that part of the agreement which related to the valuation of the repairs.(s)

Covenant "to permit the plaintiff in the last Sowing land year of the term to sow clover among the defendant's barley," and breach assigned that he sowed, &c., without giving the plaintiff notice; a plea that defendant did not prevent was held good on de-

murrer.(t)

The mere relation of landlord and tenant is a suf- Covenants ficient consideration to raise an implied promise on as to husthe part of the tenant to manage a farm in a hus-bandry. bandlike manner. (u)

Special covenants as to cultivation are not im- Special co-

(r) Pownal v. Moore, 5 B. & A. 416, s) Leeds v. Burrows, 12 East, 1.

(t) Hughes v. Richmond, Cowp. 125. Where clover is sown with corn, Tillage. the land is not thereby restored to a state of permanent pasture, but is still in tillage.—Birch v. Stephenson, 3 Taunt. 469.

(u) Powley v. Walker, 5 T. R. 373. But a declaration which stated that Manuring

in consideration that the defendant had become tenant to the plaintiff of a land. farm, defendant undertook to make a certain quantity of fallow, and to spend £60 worth of manure every year thereon, and to keep the buildings in repair, was held bad on general demurrer, because these obligations do not arise out of the bare relation of landlord and tenant.—Brown v. Crump, 1 Marsh, 567.

to be implied.

venants not plied from the mere act of holding over, as they may be from payment of rent, at the same period as evidence of agreement, to hold not only on the same terms, but subject to the same covenants.(v)

Injunction.

An injunction lies to restrain a tenant from year to year, under notice to quit from doing damage, and from removing the crops, manure, &c. (**)

Customary usage according to

In an action against a tenant upon promises that he would occupy a farm in a good and husbandlike the country manner, according to the custom of the country an allegation that he had treated the estate contrary to good husbandry and the custom of the country, is proved by showing that he had treated it contrary to the prevalent course of good husbandry in that neighbourhood; as, by tilling half his farm at once, when no other farmer tilled more than a third, though many tilled only a fourth, and is not sufficient to show any precise definition, custom, or usage, in respect to the quantity tilled. (x)

A greement. (Management of premises.)

Count in a declaration averring that the defendant was tenant to three plaintiffs, and had agreed to farm the lands in a husbandlike manner, and it appearing that the demise was only by two, and that the agreement was also to keep the land constantly in grass; it was held, that the variances were fatal. (y)

Cultivation.

In an action against a tenant upon promises to cultivate a farm according to the course of good husbandry, and the custom of the country, if the declaration sets out the custom, and the de-

Hay and straw.

(v) Kimpton v. Eve, 2 Ves. & B. 349.
(w) 11 Ves. jun. 173. Except, according to the custom of the country, a tenant may, by the general rules of husbandry, carry away straw or hay

Breach.

from the premises.—Gough v. Howard, Peake's add. Cas. 197.
(x) Legh v. Hewit, 4 East, 154. In assumpsit, on a promise to manage a farm in a good and husbandlike manner, and according to the custom of the country. Semble, that it is sufficient on special demurrer to assign a breach in the words of the premises.—Falmouth (Earl) v. Thomas, i C. & M. 89. But it was recommended to amend by inserting particular facts.

Management of farm.

(y) The defendant's tenancy of land in F., at a certain rent, was alleged as the consideration for his promise to manage it in a husbandlike manner; the land for which the rent was reserved was in F. and C.; this was held to be a futal variance in stating the consideration of the promise.-Pool v. Court, 4 Taunt, 700.

fendant traverses it, the plaintiff must prove it as

alleged.(z)

Where a farm was taken for fourteen years, and Tillage and the tenant was to pay a given sum for tillages and ments. improvements done before he entered, and to receive the value of the tillages and improvements which he should leave on the farm, according to a valuation to be made at his quitting, and the tenant in the first year of the tenancy said that he would leave, and his landlord said he might, but no new bargain was made as to his tillages and improvements; it was held that he was not entitled to the value of the tillages and improvements which he left on quitting. (a)

A tenant under an agreement to manage and quit Agreement the premises agreeable to the manner in which the upon terms same had been managed and quitted by its former tenants. tenants, is not bound by the terms upon which

they held without notice.(b)

An usage for the off-going tenant of a farm in a Usage. particular district to bestow his work, labour, and expense, in manuring, tilling, fallowing, and sowing, according to the course of husbandry, and for the landlord to pay him a reasonable compensation in respect thereof, is a valid and reasonable usage. (c)

(2) Angerstein v. Handson, I C. M. & R. 789. 5 Tyr. 583. 1 Gale, 8. Spending A custom of the country by which the tenant of a farm cultivating it acmanure on cording to the course of good husbandry, is entitled on quitting to re-premises. ceive from the landlord or in-coming tenant a reasonable allowance for seeds and labour bestowed on the arable land in the last year of the tenancy; and where he is bound to leave the manure for the landlord if he will purchase it, is not excluded by a stipulation in the lease under which he holds, that he will consume three fourths of the hay and straw on the farm, and spread the manure arising therefrom, and leave such of it as ahall not be so spread on the land for the use of the landlord, on receiving

price for it.—Hutton v. Warren, l Mees. & Wels. 466.

(a) Whittaker v. Barker, l C. & M. 113. 3 Tyr. 135.

(b) Liebenrood v. Vines, l Mer. 7. Where there is a written agree-Custom of ment, it seems the custom of the country cannot be inquired into.—Id. country.

But a custom for a tenant of a farm in a particular district to provide work

and labour tillage accepts and all materials for the same in his away. and labour, tillage, sowing, and all materials for the same, in his away-going year, and for the landlord to make him a reasonable compensation for the same, is valid in law, notwithstanding the farm is held under a written agreement, provided such agreement does not in express terms exclude the custom.—Senior v. Armitage, Holt, 197.

(c) Dalby v. Hirst, 3 Moore, 536. 1 B. & B. 224. See agreements for

leases, beginning p. 41; and as to away-going crop, see p. 74.

Right of out-gone tenant.

Where the out-gone tenant has covenanted with his landlord to leave the manure made by him on the farm, and sell it to the in-coming tenant at a valuation to be made by certain persons, the effect of such covenant is, to give the out-gone tenant a right of on-stand for his manure upon the farm, and the possession of and property in it remains in him in the mean time; and therefore, if the in-coming tenant remove and use it before such valuation, he is answerable to the out-gone tenant in trespass.(d)

Boundaries.

A tenant is bound to preserve boundaries. (e)

Tenant's acts.

When the landlord suffers his tenant to exercise acts of ownership, and making no objection to it, it is evidence to be left to the jury whether he did not mean to be bound by those acts of his tenant. (f)

Tenant permitting Waste.

(d) Beatty v. Gibbons, 16 East, 116. (e) Atty. Geni. v. Fullerton, 2 Ves. & B. 263. If he permit them to be destroyed, so that the landlord's land cannot be distinguished from his he is bound to restore them specifically, or to substitute land of equa

(f) Doe d. Winckley v. Pye, 1 Esp. 366. All cases where the court has

Bills in equity.

entertained bills for establishing boundaries have ocen where the soil itself was in question. or where there might have been a multiplication of suits. As to com—Wake v. Conyers, 1 Eden, 335. 2 Cox, 360. In order to sustain a mission for bill for a commission to ascertain boundaries, the plaintiff must establish

ascertaining by the admission of the defendant, or by evidence, a clear legal tale to boundaries. some land in possession of the defendant, and also a ground for equitable relief; and where the quantity of the land of the plaintiff in possession of the defendant is doubtful upon the evidence, the court will direct a conmission on an issue as will best answer the justice of the case. - Godfrey

v. Littel, l Russ. & Mylne, 59.

TABLES OF THE VALUE OF LEASE-HOLDS AND REVERSIONS.(g)

(1.)

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TABLE OF THE VALUE OF LEASES, ESTATES, OR ANNU-ITIES, TO MAKE THE FOLLOWING RATES PER CENT.

<u></u>	1							
	YEAR'S PURCHASE.							
<u> </u>	At 3	At 4	At 5	At 6	At 7	At 8	At 9	At 10
Years.	per	per cent.	per	per	per	рег	per	per
ļ	cent.		cent.	cent.	cent.	cent.	cent	cent.
Î 2 3	1 -	1 1 -	1 -	12-	1 =	1 -	14-	, \$-
2	2 _	2	13+	12+	14+	13+	13+	13-
3	27+	27+	24-	2	21+	21+	21+	2
4	38-	33—	34+	31-	31-	31+	31—	3{-
0	24+	11	**	5 -	4°+ 48+	41-	4	33+
5 6 7 8 9		51-	5 + 53+ 64	51+	53-	44+	41-	44
l é	74	64	61	6	6 -	54	5 5}	51+
	72+	71-	7°+ 7 2 —	63+	61	6 <u>I</u>	6 —	54
10	84+	8 +	73—	74+	7	64-	61-	64-
11	91	88	81+	8 —	71	? } —	67+	61
12 13	107-	9 1 -	88+ 91-	8 1 +	8-	7 1 8—	77	67+
14(h)	iii	101+	10 —	91	84	81	77+	71+
15 16	12 —	11 +	101+	93	9 +	81+	8 +	71+
16	121+	113-	107+	10 +	91	84+	81+	7
17	131-	12	1114+	101-	94	9 +	84+	8 +
18 19	134	123—	113- 12 +	107+	10 + 10 +	9}+	84	11
20	14 1 + 15 —	131+	121-	ii	101	94+	91—	8 1 +
25	171-	154+	14 +	124+	lii—	104	94+	9 +
30	191+	171	151+	134	124-	111	101+	91
35	81 F	184-	16[+	14	13 —	113-	101+	94-
40	23 + 241	193+ 204	171— 173	15 15 <u>1</u>	131+	15,—	104	93+
45 50	25	211	18	154	137+	12+	11 —	10 —
60	27	221+	19 -	16—	14 +	124+	ii +	10 —
70	29 +	23	191+	16]	141	12	11 +	io —
80	301-	24 —	194+	16 1	145-	121-	11 +	10
90	31	241	194	164+	144	124	11 +	10
100 Perpetual	314+ 33 1 +	211 25	19 8+	161+ 161-		121 121	11 + 11 +	10 10
T el hetant	wit i	<u>~~</u>	4U /	101_	121	149	1 T	1 10

⁽g) The algebraical signs + and — are used, importing that the value Signs. is a little more, or a little less.

⁽h) Example:—A lease or annuity for 14 years to make 5 per cent., and Example. to get back the principal, is worth a little less than 10 years' purchase of the clear annual rent; at 3 per cent., a little more than 112 years' purchase; at 8 per cent., 82 years' purchase, and so on.

(2.)TABLE OF THE PRESENT VALUE OF REVERSIONS IN YEAR'S PURCHASE(I)

After these years.	YEAR'S PURCHASE.							
	At S per cent.	At 4 per cent.	At 5 per cent	At 6 per cent.	At 7 per cent.	At 6 per cent.	At 9 per cent.	At le
1	32+	24 +	19 +	T5]—	13+	114+	101-	9 4
2	314-	23 +	181	144+	12	10	9+	9
3	901	211+	175	14 —	111	10 —	#+	2
5	991 + 981	2014	16	12	101+	2	71+	
6	28	ie	15	ii:	10	74	61-	31.
7	27 +	19"	141-	11 +	9	7	0 +	64-
8	26 +	161+	134+	10}	84+	○	54+	4
. 9	95	174	13~—	명+	77+	13	2 +	344444
10	242+	17 —	12+	914	4	21	- 25 -1	37
11	94 + 23 +	161 161+		81+ 61+	0+	547	74	33_
13	22	15	101+	23+	6 —	41+	34+	3-
14 (3)	22 +	144	10 +	71+	5	4	31+	29-
15	214-	24	94+	7	5		2 +	4-
16	201+	134+	9 <u>1</u> –	6)+	4+	[34+ [- 39+	4-
17	20	121	A Bi+	6	1 # I	1 3E	. 39. [194
18 19	104	1731	82.	5:+	72_	a _		iĽ
20	184	ii!	74+	5	34-	21-	3°-	ił
25	16 -	9 [—	6 -	33+	2	1 3 +	14+	1"-
30	134	2	(1 -	3 —	5 -	¥.		- 1
35	13	24+	3 1 −	2	11+		Ŧ	- 1
40	101-	33	22+	114	L -	1 1 1	4	- ŧ-
45	9 1 +	44+	2}—	1‡		—		÷
50	74+	34	12	1 —	1	1 1	*	TŦ
55	61	3 —	4+	1-	1	•	Te l	10
60	52-	34	1+	.	4	ابا	16	3.0

Explanation

Example.

(i) The above table shows the present value of a reversion in year sparehase of the clear annual rent after a given term, not exceeding 40 years, at 3, 4, 5, 5, 7, 8, 9, and 10 per cent interest.

(j) For example —A reversion of an estate after a 14 years' term, is worth in present money, at 5 per cent., a little more than 10 years' purchase of the clear annual rent; at 5 per cent. a little more than 27 years' purchase; at 6 per cent. 4) years' purchase, and so un-

(3.)

TABLE OF THE COMPARATIVE VALUE OF ESTATES FOR LIFE, AND OF LEASEHOLD ESTATES.(k)

Equal to a leasehold estate for a term certain.							
One life.	Two joint lives.	Longest of two lives.	Longest of three lives.				
Years.	Years.	Years,	Years.				
29.	91	43	51				
25	17	37	46				
21	15	33	39				
18	. 12	27	32				
15	10	22	26				
11	7	16	19				
7	4	11	13				
	One life. Years. 29- 25 21 18 15	One life. Two joint lives. Years. Years. 29- 21 25 17 21 15 18 . 12 15 10 11 7	One life. Two joint lives. Longest of two lives. Years. Years. Years. 29 - 21 43 25 17 37 21 15 33 18 . 12 27 15 10 22 11 7 16				

(k) The above table will show the relative value at 5 per cent, interest of

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estates held for term of life, or for a term of years, certain.

(I) For example:—An estate held on a single life aged 30, is equal in value to a leasehold estate for a term certain of 21 years, at 5 per cent.; one on two joint lives, aged 30, to a term certain of 15 years; one on the longest of two lives, aged 30, to a term certain of 33 years; and one held on the longest of three lives, aged 30, to a term certain of 39 years.

LETTERS OF ATTORNEY.

(1.)

Letter of Attorney to enter on a vacant Possession.(m) (Ejectment.)

Appointment.

To enter.

To hold

Proviso.

Know all men by these presents, that I, A. B., of, &c., have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint, C. D., of, &c., to be my true and lawful attorney for me, and in my name, to enter into, and take possession of, a certain messuage, called, &c., with the appurtenances, situate in the parish of, &c., in the county of, &c., and which is now vacant and unoccupied; and after the said C. D. shall have taken possession thereof, for me and in my name, and as my act and deed, to sign, seal, and execute, a lease of the said premises, with appurtenances, to E. F., of, &c. To have and to hold the same to the said E.F., his executors, administrators, and assigns, from the - day of —— last past, to the full end and term of seven years, from thence next following, and fully to be complete and ended, at the yearly rent of one pepper-corn, if the same shall be properly demanded; subject, nevertheless, to a proviso to make void the same, on payment or tender by me, my executors, administrators, or assigns, of the sum of sixpence, to the said E. F., his executors, administrators, or assigns. In witness whereof, I have hereunto set my hand and seal this —— day of —, in the year of our Lord, 18—.

Sealed and delivered in my presence, being first duly stamped.

⁽so) When the person bringing the action of ejectment attends personally, this letter of attorney will not be resorted to.—(See p. 25, and see Ejectment.)

(2.)

Letter of Attorney to demand and receive Rents, &c., and in Default of Payment to distrain or bring Actions for recovering the same.(n)

To all to whom these presents shall come, I, A. B., of, &c., send greeting; WHEREAS, (o) by Recital of lease. an indenture of demise or lease bearing date, &c., and made, or expressed to be made, between me, the said A. B., of the one part, and C. D., of, &c., of the other part, I, the said A. B., did demise and lease unto the said C. D., his executors, administrators, and assigns, a messuage or tenement, piece or parcel of land, and premises, situated, &c., in the said indenture of lease more particularly described; TO HOLD the same to the said C. D., his executors, administrators, and assigns, from the

(a) A power of attorney must be pursued strictly; but it is to be so construed as to include all the necessary means of executing it with effect.—

Howard v. Baillie, 2 H. B. 618.

(o) Another Form of Letter of Attorney by the personal Representative of deceased Landlord, to demand Rent and distrain by Reference to the Demise only, without a Recital of the Lease, with power to pay

ground Rent to original Landlord.

Know all men by these presents, that I, A. B., of, &c., widow, relict, Appointand administratrix, of C. B., late of, &c., deceased, for divers good causes ment of me hereunto moving, have made, constituted, and appointed, and by these attorney to presents do make, &c., C. D., of, &c., and E. F., of, &c., jointly and seve-distrain by rally my true and lawful attorney and attorneys for me, and in my name, executrix. place, or stead, jointly or severally to receive of and from G. H. and J. K., &c., their under-tenants, agents, or assigns, or of and from whomsoever else it doth or may concern, and of and from all or any of the tenants and occupiers of certain pieces or parcels of land, situate, &c., (and which were Reference heretofore demised by W. B., deceased, the father of the late C. B., by to the decertain indentures of lease bearing date respectively the —— day of ——, mise. - day of, &c., at and under the yearly rents or sums in all the said leases reserved; and on which said pieces or parcels of ground, or on part thereof, four messuages or tenements have been built, now or lately in the occupation of, &c., their under-tenants or assigns,) all sums of money which now are, or shall or may at any time or times hereafter grow due and payable, from and out of the said premises, for such rent as aforesaid; and upon non-payment thereof, or of any part thereof, for me, and in my name, and for my use as administratrix, to enter to make distresses, &c., and to give receipts, &c. (See p. 652.) ["And in the name of me, the To settle said A. B., as executrix as aforesaid, to settle and adjust all accounts for ground rent ground rent and land tax, and to pay all such sums of money as shall from time to time appear to be justly due and owing, from and out of the said rent, for ground rent, to L. M., of, &c., under and by virtue of a certain derivative lease by him thereof granted to the said C. B., by indenture, dated, &c., and to take and receive such acquittances for the same as the case shall require."] And generally for me, and in my name, to do, &c., all and whatsoever shall be requisite in the premises, &c. (See the conclusion of the precedent in the text.) In witness, &c.

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every year.

day of, &c., then last past, for the term ofyears, at the yearly rent of, &c., payable half yearly. on the — day of, &c., and — day of, &c., in

assignments, and other acts in the law, the said messuage, or tenement and premises, in the said indenture of lease described, are now vested in E. F., of, &c., or are now in the tenure or occupation of, &c., subject to the said indenture, and to the rent, covenants, and agreements, thereby re-

And whereas, by divers mesne

Mesne assignments.

Appointment to demand, &c.

served and contained, on the tenant, lessee, or assignee's part to be paid, performed, and observed, Now know YE, that I, the said respectively. A. B., have made, deputed, constituted, and appointed, and by these presents do make, depute, constitute, and appoint, the said C. D., my true and lawful attorney for me, and in my name, and for my own use and benefit, to ask, demand, sue for, recover, and receive, of and from the said E. F., his executors, administrators, under-tenants, and assigns, or other the tenant or occupier, or tenants or occupiers, for the time being, of the said messuage or tenement, or piece or parcel of ground and premises, or any part thereof, and of and from whomsoever else it doth, or shall, and may belong, to pay the same, the said yearly rent or sum of, &c.; and also all such sum or sums of money as now are, or hereafter shall or may at any time or times during the subsistance of these presents, grow, or become due or payable, from and out of, or in respect of, the said messuage or tenement, piece or parcel of ground and premises, comprised in, and expressed to be demised by, the said hereinbefore in part recited indenture of lease; and upon receipt thereof, or any part thereof, for me, and in my name, good and sufficient discharges and acquittances from time to time to make and give for the same; and also to pay, settle, and adjust, all accounts, claims, and demands, for ground rent, land tax, and repairs of the same, and other lawful deductions, to deduct and To distrain. allow. And upon non-payment of the said yearly

To give discharges.

rent, sum or sums of money, or any part thereof, for me, and in my name, to enter into and upon the said premises, or any part thereof, and to seize and distrain all or any goods, chattels, or effects, which shall then and there be found, or which shall have been thence unlawfully removed, and every, or any such distress or distresses, to take, carry away, distrain, and keep, until the said rent and allowances thereof, and all costs attendant upon such distress shall be fully paid and satisfied, and in default or non-payment thereof, for the space of — days next, after such distress shall be made. to sell and dispose of, or otherwise deal with, the same according to law, or at the discretion of the said C. D., to commence or prosecute any action, To bring actions. suit, bill, plaint, avowry, or information, or to take, or employ, any such other lawful powers, remedies, expedients, ways, and means, for the recovering and attaining payment of the same, as fully and effectually to all intents and purposes whatsoever, as I myself might or could have commenced, prosecuted, taken, and employed, if personally present, and these presents had not been made. And And to also, from time to time, to substitute and appoint one or more attorney or attorneys under him, the said C. D., for all, or any of the purposes aforesaid, and again, at his pleasure, to displace and remove as he shall see occasion or think fit. I, the said A. B., hereby giving and granting unto the said C. D., full and sufficient power and authority, in or concerning the premises, for all and every, or any of the purposes aforesaid, and promising and agreeing to ratify, allow, and to confirm, all and whatsoever the said C. D., or his attorney or attorneys, shall lawfully do, or cause to be done, in and concerning the premises, by virtue of these presents. In witness, &c.

(3.)

Letter of Attorney to distrain for Rent. (See note to p. 651.)

Appoint ment

Know all men by these presents, that I, A. B., of, &c., for divers good causes and considerations, me hereunto moving, have made, nominated, authorised, constituted, and appointed, and by these presents, doth, &c., C. D., of, &c., and E. F. of, &c., jointly and severally, my true and lawful attorney and attorneys for me, and in my name, place, and stead, jointly or severally, to enter into and upon all that messuage or tenement, farm lands, hereditaments, and premises, situate and being in the parish of, &c., in the county aforesaid, and now in the tenure or occupation of R. S., his undertenants or assigns, and held by him of me, at and To distrain. under the yearly rent of, &c., and to make or cause to be made one or more distress or distresses of all or any hay, corn, goods, chattels, beasts, sheep, or other effects or things whatsoever, standing, lying, and being in and upon the said demised premises, or any part thereof, for all such rent or rents that was, or were, and now is, due and owing to me, to, at, &c., last past, for or on account of the said premises, or any part thereof, and such distress or distresses when made or taken for me, and on my behalf, to hold, detain, and keep, until payment and satisfaction to be made to me, for all such rent due and in arrear to me, and all costs and charges of making such distress, and in case of non-payment thereof, within the time limited, after such distress made by the laws now in force to appraise, sell, and dispose of the same, or cause the same to be appraised, sold, and disposed of, according to law, I, the said A. B., giving and granting unto my said attorneys and attorney, jointly and severally, full power and authority for me, and in my name, and on my behalf, to do or cause to be done, all such acts, matters, and things, whatsoever, touching, concerning, or in anywise relating to the said

Authority.

premises, as fully to all intents and purposes whatsoever, as I, the said A. B., might or could do in my own proper person, in case these presents had not been made. And whatsoever my said attorneys Ratification or attorney, or either of them, shall lawfully do or cause to be done in or about the premises, I hereby, for myself, my heirs, executors, and administrators, agree to allow, ratify, and confirm. In witness, &c.

Letter of Attorney to demand Rent, and in Default of Payment to re-enter, pursuant to a Proviso contained in the Lease.

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Know all by these presents, that I, A. B., of, &c., do make, ordain, constitute, and appoint, C. D., of, &c., my true and lawful attorney, for me, and in my name, to demand and receive of and from I. L., of, &c., on the —— day next, coming at, &c., commonly called or known by the name of, &c., situate, &c., the sum of £--- of lawful money, &c., which will become due unto me, the said A. B., from the said I. L., at the said feast day before mentioned, for one half year's rent, for the said messuage, farm, and lands, with their appurtenances, which by an indenture of lease, bearing date the —— day of, &c., were by me, the said A. B., demised unto the said I. L., for a certain term of years; AND in default of payment of the said sum of £---, I give and grant unto my said attorney full power and authority to enter into and upon the said messuage, &c., and premises, by the hereinbefore mentioned indenture of lease demised, and the same for me, and in my name, stead, and place, to take possession, to the intent that the said indenture of lease may become void, according to a certain proviso in the said indenture of lease, for that purpose contained. And Further, to execute and perform all things requisite and necessary to be done in and about the execution of these presents, see page 654. I hereby ratifying, &c., and agreeing to ratify, &c., see last precedent. In witness, &c.

LICENSE TO DEMISE AND ASSIGN.

(1.)

License from Landlord to assign to a particular Person.(p)

Landlord's license and consent.

I, A. B., of, &c., do, by this writing under my hand and seal, signify my license and consent for C. D., of, &c., to assign to E. F., of, &c., all, &c., (describe the parcels from the lease,) and all and singular other the premises demised in and by a certain indenture of lease, bearing date the day of —, 18—, and made between, &c., [if it has been assigned, add, "and since assigned to the

Short form not restricted to any particular person.

(p) If the license be not restricted to a particular person it may be thus: "Memorandum, that A. B., of, &c., (the lessor,) doth license and permit C. D., of, &c., (the lessee,) his executors and administrators, to demise, assign, or otherwise part with, or dispose of, all or any part of the messuages or tenements and premises to him demised, in or by a certain indenture of lesse harries of the messuages. indenture of lease, bearing date, &c., unto any person or persons, at his or their free will and pleasure for all or any part of the estate, term, or interest, of him, the said C. D., therein, under, or by virtue of the said indenture. any covenant, clause, restriction, or agreement, therein contained to the contrary notwithstanding. In witness whereof the said A. B. hath here-

Copyhold.

unto set his hand this —— day of, &c.

If the license be from the lord of the manor to a copyholder to demise copyhold premises, the form may be thus: "Manor of, &c Be it remembers." copyhold premises, the form may be thus: "Manor of, see Best remenbered that on the — day of, see, the lord of the said manor, out of court, by C. D., gent., his steward, duly authorized in that behalf, granted license unto E. F., of, see, one of the customary tenants of the same manor, to demise and let all, see, unto any person or persons, whomever, being willing to take the same for the term of — years, to commence from the — day of, see, next ensuing, or for any shorter term, saving always unto the said lord of the said manor for the time being, his heirs, sequels in right, and assigns, all and all manner of fines, rents, services, and customs, before due, and of right accustomed to be paid with full never customs, before due, and of right accustomed to be paid, with full power for him and them from time to time, and at all times during the said term to enter into the said premises or into any part thereof, to seize, distrain, and take away any distress, or other lawful remedy for recovering thereof, as freely as if this license had not been given. And for this license the said E. F. hath given unto the said lord, the sum of, &c., being —— pence. The terms of for each year of the said term.—In witness, &c. (The lease by the copyholder must correspond with the terms of the license; for if the license be to lease for twenty-one years from Michaelmas, and the copyholder lease for twenty-one years, to commence at the Christmas following, the lease will be void.—Jackson v. Neale, Cro. Eliz. 365. But a copyholder may demise for a less though not for a greater term than his license specifies — Godwin v. Longhurst, Cro. Eliz. 635. It seems the lord may authorise the copyholder to demise either for a term of years absolutely or determinable on lives, but not to demise for life, even though there be a coast alleged to support it, as a demise for life would pass a freehold interest.—Godb. 171, ca. 236.)

the liceuse must be exantly complied with.

said E. D.,"] together with the said indenture of lease, for all or any part of the residue of the term of twenty-one years, by the said indenture of lease granted now to come and unexpired, under and subject to the payment of the yearly rent of, &c., Premises. thereby reserved, and to the observance and performance of the several covenants, provisoes, and agreements, therein contained on the tenant's or lessee's part to be performed, fulfilled, and kept. PROVIDED ALWAYS, nevertheless, that this license Term. and consent shall not extend or be construed to extend, to authorise or permit the said E. F., his executors or administrators, or any of them, to assign the said messuage or tenement and premises, or any part thereof, or the said indenture of lease, or his or their estate or interest therein, for all or any part of the said term thereby granted, to any person or persons whomsoever; but on the contrary, to Proviso. restrain him and them therefrom, without the further license of me, my heirs, or assigns, for that purpose first had and obtained.](q) In witness, &c.

-(2.)

Form of License from Landlord to Tenant to exercise a Trade restricted in a Lease.

Know all men by these presents, that I, A. B., License of, &c., do hereby give full license and liberty unto C. D., of, &c., to use, exercise, and carry on, upon the messuage or tenement and premises demised to him by indenture of lease, dated, &c., the trade or business of, &c., and for that purpose, if he shall think proper, to convert the same into a shop or

(q) Where there is a condition in a lease for re-entry on alienation by Condition in the tenant, without license from the lessor, upon the landlord once lease for regranting a license, even though it be given to one only of lessees, or entry. limited to a particular alience, or confined to a part only of the estate demised, yet this for ever discharges the condition.—Brummell v. Macpherson. 14 Ves. 173. It seems at common law a condition is so entire in its nature that it cannot be apportioned and hence a dispense. so entire in its nature that it cannot be apportioned, and hence a dispensation with say is a dispensation with every branch of it.—Dumpicis case, 4 Rep. 119.—Smith's leading cases, 1, 15; and so where the condition is complied with, as upon the tenant assigning with license according to the terms of the condition. It appears if the condition is to be revived for the landlord it must be done (where the lease is for a term of years) by defeasance.

Condition.

⁽r) The case of Brummell v. Macpherson, 14 Ves. 173, (see note to p. 657,) does not apply to conditions in restraint of particular trades usually contained in leases, as any one of the trades mentioned in the provinc may be dispensed with, without such dispensation affecting the others; (see Macker v. Foundling Hospital, 1 Ves. & Bea. 189;) and the distinction seems to be, that the one is, in fact, a string of separate conditions applicable to each trade in particular, without relating to those conjoined with it, and not a condition being an entire thing by which as dispensation of part would be a dispensation of the whole condition, which could not be revived.

OBSERVATIONS AND CASES.

LICENSE is a power or authority given to a man Explanation to do some lawful act, and is a personal liberty to of license. the party to whom given, which cannot be transferred over, though it may be made to a man and

his assigns.(s)

In leases there is generally inserted a proviso to Leases with restrain the lessee assigning, without the license provisoes. and consent of the lessor; and this proviso appears to be essential to guard against the estate falling into the hands of any other person who may not manage it as well as the original tenant. (t)

A proviso in a lease for re-entry upon assign- The coudiment by the lessee, his executors, administrators, tion ceases or assigns, without license, the condition itself by license. ceases by assignment with license though to a

particular individual.(u)

When there is a right of entry given for an as- Evidence of signing or under-letting, if a person is found in the underletting premises appearing as the tenant, it is prima facie evidence of an under-letting sufficient to call upon the defendant to show in what character such person was in possession as tenant or servant to the lessee.(v)

(s) 12 Hen. VII., c. 25. And there may be a parol license, as well as parollicense by deed in writing, in the absence of any express provision to the contrary.—See 2 Nels. Abr. 1123. But where a proviso in a lease that lesses that les sees should not demise the premises without a license in writing, a parol license to underlet was, of course, insufficient; but where such license is

given as a snare, and under circumstances of fraud, the court will relieve.

—Richardson v. Evans, 3 Madd. 218.

(t) Covenants restraining lessees from alienation without license, are construed with jealousy.—See Church v. Brown, 15 Ves. jun. 264.

Greenaway v. Adams, 12 Ves. jun. 395. Although the word "assigns" tion of covenants pot he in the lesse. Yet he may alien symposius expressional. Greenaway v. Adams, 12 Ves. jun. 395. Although the word "assigns" hants remay not be in the lease, yet he may alien, unless expressly restrained.—Id. Although the word "assigns" be inserted in the lease, where the usual restraint is contained, yet it is not repugnant, as it will be construed such assigns only as be may lawfully have; that is, by license from his landlord, or by law, as assignees in bankruptcy.—Wetherell v. Geering, 12 Ves. jun. 504. (See "Provisoes.")

(u) Brummell v. Macpherson, 14 Ves. jun. 173. (See note to p. 657.)

(v) Doe d. Hindley v. Rickarby, 5 Esp. 4. But it is not sufficient to prove the defendant a stranger in possession of the denised premises, and his declaration that they were demised to him by another stranger.—Doe

his declaration that they were demised to him by another stranger.—Doe

Administratrix.

An administratrix of a lessee cannot underlet without incurring a forfeiture, where there was a proviso that the lessee and his administrators should not let or assign over the whole or part of the premises, without leave in writing, on pain of forfeiting the lease.(m)

Breach by underlease.

A covenant not to assign, or otherwise part with the premises, or any part thereof, for the whole or any part of the term, is broken by an underlease.(x)

Underlease.

But a covenant not to assign, transfer, set over, or otherwise do or put away the lease or premises, does not extend to an under-lease for part of the term.(y)

Lodgings.

It appears that letting lodgings is not a breach of a covenant not to underlet, (z)

Contract to assign.

If the vendor of a lease, in which is a covenant not to assign, contract to assign his interest, it is incumbent on him, and not on the purchaser, to procure the lessor's license for the assignment (a)

Advertisement.

Under a right of re-entry upon under-letting, an advertisement does not work a forfeiture. (b)

Deposit of lease.

A covenant in a lease of a chop-house, not to let, set, assign, transfer, set over, "or otherwise part with the premises thereby demised, or that present indenture of lease," is not broken by proof of a deposit of the lease with the brewers of the lessee, as a security for money advanced and beer supplied to the house, as it could not be deemed to be a

v. Payne, 1 Stark, 86. And such evidence would not be sufficient, even if the touant had covenanted not to part with the possession.—Id. (In

Assets.

Underleases

respect to assignees in bankruptcy, see p. 154, and notes.)

(w) Roe d. Gregson v. Harrison, 2 T. R. 425. But executors may dispose of a lease for years as assets, notwithstanding a provise or esvenant that leases shall not alien.—Seers v. Hind, 1 Ves. jun. 225.

(x) Doe d. Holland v. Worsley, 1 Camp. 20. And so although underleases are not within the general words of provisees concerning assignments.—Kinnersley v. Orpe, 1 Doug. 55. S. P. Church v. Brown, 15 Ves.

Exception

(y) Crusoe d. Blencowe v. Bugby, 2 W. Black. 766. 3 Wile. 234.
(z) Doe d. Pitt v. Laming, 4 Camp. 77.
(a) Lloyd v. Crisp, 5 Taunt. 249. If a covenant not to assign contain. in covenant an exception in favour of assignment by will; semble, that executers claiming under the will are not within the exception, so as to be at liberty to sell for payment of debts without license of the lessor.—Id.

(b) Gourlay v. Somerset (Duke), 1 Ves. & B. 68.

parting with the premises within the meaning of the covenant.(c)

Though bankruptcy supersedes an agreement not Bankruptcy. to assign without license, it has been held only in favour of general creditors, and where there is no

actual fraud.(d)

In contemplation of law, a copyholder is only a As to license tenant at will, and has no power to grant a lease for a manor to a any longer period than one year, unless authorised copyholder. to do so by a special custom of the manor, or by a license from the lord. This license being merely an authority, will necessarily determine with the interest of the person granting it. The lord, therefore, from whom a license is obtained, should have an interest in the manor, capable of supporting the lease intended to be granted; for, if he merely be a tenant for life or for years, and die, or his interest expire before the expiration of the lease, the license will become void, and the term of years granted, in consequence of such license, will determine with it. (e)

As before observed, (f) a condition being an As to license entire thing, if any part of it be once dispensed to exercise a trade rewith, the whole condition is gone, and cannot be strained by revived; and hence that a license to assign over, though confined to a particular person by name, will abrogate the proviso altogether, and the lessee may afterwards assign at pleasure. But a permis- Permission. sion to use one of the trades mentioned in the condition, is not a waiver of the entire stipulation, so as to permit the tenant to exercise any of the rest. (q)

(c) Doe d. Pitt v. Hogg, 4 D. & R. 226. 1 C. & P. 160. S. C. nom.
Doe d. Pitt v. Laming, R. & M. 36.
(d) Weatherall v. Geering, 12 Ves. jun. 504. Quere, whether a person Assignment entitled under an agreement for a lease, to be void upon an assignment without license, having assigned without license, can enforce a specific performance.—Id.

(e) Pellie v. Debbans, I Roll Abr. 511- K. Co. Copyh. s. 24. Gilb. License. Ten. 298. Petty v. Evans, 2 Brown, 40. The term of years, when created by the license of the lord, is an interest at common law, and not a copyhold one, and may, therefore, be assigned by the lessee without any further license or authority from the lord; therefore, if the contrary be intended, the clause of restriction as in precedent, No. 1, p. 656, should be inserted.

(f) See pp. 667—659. (g) Macher v. Foundling Hospital, 1 Ves. & B. 189. (See note to p. 658.) 3 ĸ

As to coveuant not to exercise trades. Where a lessee of a house and garden for a term of years covenanted with the lessor "not to use or exercise, or permit or suffer to be used or exercised, upon the demised premises, or any part thereof, any trade or business whatsoever, without the license of the lessor," and he afterwards, without the license of the lessor, assigned the lease to a schoolmaster, who carried on his business in the house and premises; it was held that the assignment was a breach of this covenant, and the lessor entitled to re-enter under a proviso for re-entry for non-performance of covenants. (h)

Expense of license.

If the vendor of a lease, in which is a covenant not to assign, contract to assign his interest, it is incumbent on him, and not on the purchaser, to procure the lessor's license for the assignment. (i)

(i) Lloyd v. Crispe, 5 Taunt, 249.

⁽A) Doe d. Bish v. Keeling/1 M. & S. 95; and see Jones v. Thome, 3 D. & R. 152. 1 B. & C. 715.

NOTICES TO QUIT.(j)

To Mr. C. D.

I hereby give you notice to quit, and deliver up Notice by to me, or such other person as I shall appoint to a yearly tereceive the same, on the —— day of —— next en-nant to quit. suing the date hereof, being the end of your present Geo. II., c. year's holding the peaceable possession of all that, 28, and see p. &c., which you now rent or hold under me, situate in the parish of ——, in the county of ——. Dated this —— day of ——— 18—.

(i) A notice to quit must be given previously to bringing an action of ejectment, whenever there is an existing tenancy from year to year.—Throgmorton v. Whelpdale. Bull, N. P. 96. Doe d. Hollingsworth v. Stennet, 2 Esp. 717. Doe d. Martin v. Watts, 7 T. R. 83. 2 Esp. 501. Doe d. Moor v. Lawder, 1 Stark. 308. Doe d. Warner v. Brown, 6 East. 166.—Where a tenant from year to year dies, his personal representatives have the same interest in the land which he had, and therefore entitled to the same notice to quit.—Doe d. Shore v. Porter. 3 T. R. 13 S. P. Parker d. Walker v. Coustable, 3 Wils. 24, and see Mackay v. Mackreeth, 3 T. R. 13, s.—Gulliver d. Tasker v. Burr, 1 W. Black. 596. Where the term of a lease is to end on a precise day, there is no occasion for a notice to quit, previous to bringing an action.—Cobb v. Stokes, 8 East. 358. S. P. Messenger v. Armstrong, 1 T. R. 54; and see Right d. Flower v. Darbey, 1 T. R. 162. A tenant holding under an agreement for a lease for seven years, which was never executed, is not entitled to a notice to quit at the end of the seven years.—Doe d. Tilt v. Stratton, 4 Bing. 446. 1 M. & P. 183. 3 C. & P. 164, and see Doe d. Bromfield v. Smith, 6 East, 520. 2 Smith, 570. 2 T. R., 436. When a party occupies under an agreement for a lease during the whole term for which the lease was to be granted, a notice to quit is not necessary at the end of such term, as the agreement is evidence of the expiration of the tenancy, as well as of the other terms of the holding.—Id. A notice is necessary where the tenant does an act which amounts to a disavowal of the title of the lessor.—Doe d. Grubb v. Grubb, 10. B. and C. 816. Doe d. Williams v. Pasquali, Peak. 196. Doe d. Jeffries v. Whittick. Gow. 195. Doe d. title of the lessor.—Doe d. Grubb v. Grubb, 10. B. and C. 816. Doe d. Williams v. Pasquali, Peak, 196. Doe d. Jeffries v. Whittick. Gow. 195. Doe d. Clunn v. Clarke, Peak's add. Cas. 239; Rogers v. Pitcher, 6 Taunt. 202. 1 Marsh, 54; and see Doe d. Dillon v. Parker, Gow. 180. But refusal to pay rent to devisee under a will, which is contested, is not such a disavowal.—Id. Nor where the possession of the tenant is adverse—Doe d. Foster v. Williams, Cowp, 622. S. P. Doe d. Cheeser v. Creed, 2 M. and P. 648. S. C. Nom. Doe d. Davis v. Creed, 5 Bing, 327. A tenant of spartments is not justified in quitting without notice, merely from a fear, however reasonable, that his goods may be seized for his landlord's rent.-Rickett v. Tullick, 6 C. & P. 66. A tenant who after giving notice to quit, holds over for a year, paying double rent according to 11 Geo. 11. c. 19, s. 18, may quit at the end such year without fresh notice.—Booth v. Macfarlan, 1 B. and Adol. 904.—In respect to co-partnership, when by the terms of the partnership deed, a house is to be used and occupied by the co-partners, during the co-partnership, it is not necessary, after a dissolution of partnership, to give a notice to quit previous to bringing an action of ejectment against a co-partner.—Doe d. Waithman v. Miles, 1 Stark, 181. 4 Camp. 373. In the case of a mortgage it is not necessary

for a mortgagee to give notice previous to bringing an ejectment to a tenant who claims under a lease from the mortgagor, granted after the mortgage, without the privity of the mortgages.—Resch d. Warns v. Hall, I Doug. 21. Nor where the tenant was let into possession after the original mortgage was made, but before an assignment of it for the purpose of bringing ejectment.—Thunder d. Weaver v. Belcher, 3 East. 449.—But see Birch v. Wright, 1 T. R. 378.

Half a year's notice must be given to a tenant at will, or his exactor.

Length of notice.

Monthly taking.

to quit, or ejectment does not lie. Six months' notice is not sufficient.—
Parker d. Walker v. Constable, 3 Wils. 25. Where rent is reserved quasterly it does not dispense with six months' notice to quit.—Shirely s.
Newman, 1 Esp. 266. But if a quarter's notice be given to the lease. and the rent paid up to the time when the tenant should quit, and the lessor neither assent nor dissent, it shall be taken as a waiver of the regular notice, and an acquiesence on his part.—Id. A month's notice is not sufficient.—Gulliver d. Tasker v. Burr, 1 W. Black, 566. In all cases the notice to quit must have reference to the terms of the letting; therefore in ejectment for a house, where the defendant had taken the house by the month, it was held that a month's notice to quit was sufficient to entitle the plaintiff to recover.—Doe d. Parry v. Hazell, I Esp. 94. In an agreement for a demise, where the rent was to be paid weekly, and to have a month's warning, if no default was made in payment of the rent, but which agreement the lessor afterwards refused to execute, and the tenant paid his rent weekly, it was held that he was entitled to a month's notice to quit, although the agreement was not executed; and although if he had been weekly tenant, a week's notice would have been sufficient.—Doe d. Peacook v. Raffan, 6 Esp. 4. A notice to quit at old Michaelman, though given held a week helder now Michaelman, or which Michaelmas, though given half a year before new Michaelmas, at which time the tenancy expired, is bad.—Doe d. Spicer v. Lea, 11 Rast. 312.—A notice on the 28th September, to quit on the ensuing 25th of March, is a sufficient half year's notice.—Roe d. Durant v. Doe, 6 Bing, 534. 4 M. and P. 391. S. P. Doe d. Harrop v. Green, 4 Esp. 198. A notice given on the 26th of September to quit at the end of six calendar months is good to determine a holding commencing on the 25th of March.—Howard v. Wemsley, 6 Esp. 53. (But see Ad. on Eject. 194.) So though the word "calendar" had been omitted, or the notice had expressed half a year.—Id. If notice to quit at Midsummer be given to a tenut holding from Michaelmas, he may insist on the insufficiency of the notice at the trial, though he did not make any objection at the strial. at the trial, though he did not make any objection at the time when it was served.—Oakapple d. Green v. Capons, 4 T. R. 361.

By whom to be given.

The notice to quit must be given by the person interested in the pressses, or his authorised agent, and such agent must be clothed with his power to give the notice at the time when the notice is given, a subsequent assent on the part of the landlord not being sufficient to establish by relation a notice given in the first instance without his authority; and this principle is founded in reason and good sense, for as the tenant is to actupon the notice at the time it is given to him, it ought to be such as one as he may act upon with security; and if an authority by relation were sufficient the situation of the tenant must remain doubtful until the ratification or disavowal of the principle, and he would thereby sustains manifest injustice.—Madden d. Baker v. White, 2 T. R. 159.

When also two or more persons are interested in the promines, a netice

Two or more ses.

Joint tenants.

Tenants in common.

interested in the premi-the premi-lin, 3 Taunt 120. Doe d. Green v. Baker, 8 Taunt 241, unless he was acing at the time under the authority of the other parties mentioned in the notice. But this rule it seems does not hold when the parties are interested as joint tenants, because of the rule of law, that every act of our joint tenant, which is for the benefit of his co-joint tenant, shall bind hom. and it must be predicated that the determination of the tenancy by such a tice is for the benefit of the estate. - Right d. Fisher v. Cuthell, 5 Bast. 461.

And where several tenants in common are interested, as many of them as give notices may recover their respective shares.—Doe d. Whayman ? Chaplin, 3 Taunt. 120. Doe d. Green v. Baker, 8 Taunt. 241. Although

the others do not join, unless indeed by the conditions of the tenancy it Concuris rendered necessary for all the parties to concur in the notice, in which rence. case a notice given by some of the parties, without the junction or authority of their companious, will be altogether invalid.—5 East. 491.

Where the relation of landlord and tenant subsists, difficulties can seldom On whom occur as to the party upon whom the notice should be served. The the service service should be invariably upon the tenant of the party serving the should be notice, notwithstanding a part or even the whole of the premises may made. have been underlet by him. And in a case where the service was upon a relation of the undertenant upon the premises, the service was ruled by Lord Ellenborough in the case of Doe d. Mitchell v. Levi, to be insufficient, although the notice was addressed to the original tenant.

The original tenant is also liable to an ejectment at the expiration of The original the notice for the lands in the possession of his undertenants, although he tenant and may on his part have given proper notices to them and delivered up such his under parts of the premises as were under his own control.—Roev. Wiggs, 2 N.R. tenant. 330.—Pleasant d. Hayton, v. Benson, 14 East. 234.

Where the premises are in the possession of two or more as joint tenants Service of or tenants in common, a written notice to quit, addressed to all and notice on served upon one only, will be a good notice.—Doe d. Lord Bradford v. joint tenants Watkins, 7 East. 551. So also a parol notice given to one co-tenant &c. only will bind his fellow.—Doe d. Lord Macartney v. Crick, 5 Esp.

With respect to the mode of serving the notice, it is in all cases advisa- Service of ble, if possible, to deliver it to the tenant personally; but if personal service notice, (on cannot be effected the service will be sufficient if the notice be left with the schom). wife or servant of the tenant, at his usual place of residence, whether upon the demised premises or elsewhere, and its nature and contents explained at the time.—Jones d. Griffiths v. Marsh, 4 T. R. 464. Doe d. Lord Bradford v. Watkins, 7 East. 353. Doe d. Neville v. Dunbar, 1 M. & M. 10. But a mere leaving of the notice at the tenant's house, without proof that it was delivered to some member of the household, will not be sufficient service.— Doe d. Buross v. Lucas, 5 Esp. 153.

Where the landlord intends to enforce his claim to double value, if Form of the tenant holds over, (4 G. II., c. 28, s. 1,) it is necessary that the notice notices. to quit should be in writing, but for the purpose of an ejectment a (4 G. II., c. parol notice is sufficient, unless the notice is required to be in writing, 28, s. 1.) by express agreement between the parties.—Legg d. Scott v. Benion, Notice when Willes, 43. Timmins v. Rowlinson, 1 Blk. 533. Doe d. Lord Macartney verbal or in v. Crick, 5 Esp. 196. Roy d. Dean of Rochester v. Pierce, 2 Camp. 96. It writing. is however the general practice to give written notices, and it is a precaution which should always, when possible, be observed, as it prevents mis-takes and renders the evidence certain and correct. It is customary also to address the notice to the tenant in possession, and it is perhaps most prudent to adhere to this form, though if proof can be given that the notice was served personally upon him, it is thereby rendered unnecessary.—Doe d. Matthewson v. Wrightman, l Esp. 5. And where a notice was addressed to the tenant by a wrong Christian name, and the tenant did not return the notice or object to it, and there was no tenant of the name mentioned in the notice, it was ruled at N. P., sufficient.—Doe v. Spiller, 6 East. 70. A subscribing witness to a notice to quit is unneces- Witness to sary, and it is prudent not to have one, as it may occasion difficulties in notice. the proof of the service, and cannot be of the slightest advantage to the landlord.—Doe d. Sykes v. Durnford, 3 M. & S. 62. Care should be taken that the words of a notice are clear and decisive, without ambiguity, or giving an alternative to the tenant; for although the courts will reluctantly listen to objections of this nature, yet if the notice be really ambiguous or optional, it will be sufficient to render it invalid as fur, at least, as the action of ejectment is concerned. The notice however will not be invalid, unless it contain a real and bone fide option, and not merely an apparent one; for if it appear clearly from the words of the notice that the landlord had no other end in view than that of turning out the tenant, it will be deemed a notice sufficient to found an ejectment upon, notwithstanding an apparent alternative. Thus the words, "I Alternative desire you to quit the possession at Lady-day next, of the premises, &c., in words.

your pessession, or I shall insist upon double rent," have been held to co tain no alternative, because the landlord did not mean to of gain thereby, but only added the latter words as an emphatical way of enforcing the notice, and showing the tenant the legal consequences of his holding over. It was contended for the tenant that this could not be the construction of the notice, because the statue 4 Geo. II., c. 28, does not give double the rent but double the value, on holding over; but Lord Mansheld, C. J., was of opinion that the notice, notwithstanding the variance, clearly referred to the statute. It seems, however, that if the words had been, "Or else that you agree to pay double rent," the notice would have been an alternative one.—Doe d. Matthews v. Jackson, Dong. 175. (It seems the court will not invalidate a notice on account of an embiguity in the wording of it, provided the intention of the notice is sufficiently certain.) When a notice was to quit "on the 25th day of March or 6th day of April, next ensuing," and was delivered before are Michaelmas-day, it was held to be a good notice, as being intended to meet an holding, commencing either at old or new Lady-day next, and ast to give an alternative.—Doe d. Matthewson v. Wrightman, 4 Rep. S. It is not necessary that a notice to quit should be directed to the tenant m possession, if proved to have been delivered to him at the proper time.—Id. A notice delivered to a tenant at Michaelman, 1795, to quit, ** at Lady-daywhich will be in the year 1795," was held to be a good notice to quit on Lady-day, 1796.—Doe d. Bedford (Duke) v. Knightly, 7 T. R. 63. 1 Chi. 11. (b) A notice to quit on Lady-day is a good termination of helding, either from Lady-day old or Lady-day new style.—Denn d. Willen v. Walker Probase add and 104. Walker, Peakes add. cas. 194. If a tenant from year to year hold from old Michaelmas a notice to quit "at Michaelmas," generally is good—1) ue d. Hinde v. Vince, 2 Camp. 256. S. P. Doe v. Brookes, 2 Camp. 257. But see Doe d. Spicer v. Lea, 11 East, 312. But a notice to quit st Michaelmas generally will be held to mean old Michaelmas, if the custom of the country be to hold from that time.—Furley d. Canterbury e. Wood, I Rep. 198. Where on a written agreement to demise from the fellowing "Lady-day," a notice to quit " on the 6th of April" is good, parallevidence having been adduced to show that by "Lady-day" the parties meant old Lady-day.—Denn d. Peters v. Hopkinson, 3 D. & R. 567.

(See pp. 670, Notice to quit at the end or expiration of the "current year of year tenancy which shall arrive next after the end of the "current year of year. tenancy, which shall expire next after the end of one balf year from the date hereof," was held sufficient.—Doe d. Phillips v. Butler, 2 Kep. 580.

672.)

Intention

Description of premises.

A misdescription of the premises is not fatal, if they are otherwise safficiently designated, so that the party to whom the notice has been given has not been misled.—Doe d. Cox and others, 4 Rsp. 185. But a m to quit a part only of premises leased together is bad.—Doe d. Rodd v. Archer, 14 East, 245. Where a house, lands, and tithes, are held under a parol démise at a joint rent, a notice to quit " the house, lands, and premises, with the appurtenances," includes the tithes, and is sufficient to put an end to the tenancy.—Dee d. Morgan v. Church, 3 Camp. 71. But the notice should include all the premises held under the same density. for the landlord cannot determine the tenancy as to part of the things demised, and continue it as the residue.—Doe d. Rodd v. Archer, 14 East,

Expiration of notice.

In the case of a tenancy from year to year, there must be half a year's notice to quit, ending at the expiration of the year.—Right d. Flowers Darby, I T. R. 150; and see Doe d. Puddicombe v. Harris, 1 T. R. 161.a. If premises are taken "for twelve months certain, and six months' notice to quit afterwards," the tenancy may be determined by a six months' notice to quit, expiring at the end of the first year.—Thompson v. Moberly, & Camp. 573. It appears that certain demises which have the spontage of the series of the ser pearance of tenancies from year to year only, are considered by the court as conveying to the tenant an indefeasible interest for a certain time, shough afterwards liable to be determined by a notice to quit. Thus a demise, "not for one year only, but from year to year," has been held to constitute a tenancy for two years at least, and not determinable by a notice to quit at the expiration of the first year.— Donn d. Jacklin v. Cartwright, 4 East, 31. The same interpretation has also been given to a demise " for a year, and afterwards from year to year."—Birch v. Wright, I

T. R. 378-80. Johnson v. Huddlestone, 4 B. & C. 922. Where premises Expiration are let from year to year, upon an agreement that either party may deter- of notice. mine the tenancy by a quarter's notice, the notice must expire at the period of the year when the tenancy commenced.—Doe d. Pitcher v. Donavon, I Taunt. 555. 2 Camp. 78. So where the premises are taken under an agreement by which the tenant is always to quit "at three months' notice," the notice must expire either at the same time of the year when the to nancy commenced, or at any other corresponding quarter day.—Kemp v. Derrett, 3 Camp. 510. If a landlord lease for seven years by parol, and agree that the tenant shall enter at Lady-day, and quit at Candlemas, though the lesse be void by the statute of frauds as to the duration of the term, the tenant holds under the terms of the lesse in other respects; and therefore, the landlord can only put an end to the tenancy at Candlemas.

—Doe d. Rigge v. Bell, 5 T. R. 471. As no new tenancy is created by a —Doe d. Rigge v. Bell, 5 T. R. 471. As no new tenancy is created by a more agreement for an increase of rent in the middle of the year of a tenancy, a notice to quit after the receipt of the increased rent must expire at the time when the tenant originally entered.—Doe d. Bedford v. Kendrick, Ad. Eject. 129; and see Doe d. Holcomb v. Johnson, 6 Esp. 10. Where a remainder man creates a new tenancy with a tenant in possession under a void lease granted by a tenant for life, and receives rent on the days of payment mentioned in the lease, a notice to quit must expire on the day of entry under the original demise.—Roe d. Jordan v. Ward, l. H. Black. 97. S. P. Doe d. Collins v. Walker, 7 T. R. 478. If a tenant disputes the time when his tenancy commences, and that his notice to quit does not correspond with it, it is incumbent on him, and not on the lessor, to show the true time of the commencement of the tenancy.—Doe d. Matthewson v. Wrightman, 4 Esp. 5. Where a tenant, on being applied to respecting the commencement of his holding, informs the party that it begins on a certain day, and notice to quit on that day is given at a subsequent time, he shall be bound by the information he so gave, and not be permitted to show that, in fact, it began at a different time.—Doe d. Eyre v. Lambley, 2 Bsp. 635.

By the common law, the notice necessary, in general, to be given to a Period netenant is a notice for half a year, expiring at the end of the current year cessary in of his tenancy; and that a notice expiring at any other period will not be notice to sufficient. This notice has been frequently understood as a six months' quit. notice; and the distinction seems to be, that when the tenancy expires at any of the usual feasts; as, Michaelmas, Christmas, Lady-day, or Midsummer, the notice must be given prior to the corresponding feast happening in the middle of the year of the tenancy; whilst if it expire at any other period of the year, the notice must be given six calendar months previous to such expiration. The notice, when a tenancy commences at any of the usual feasts, may be given to quit at the end of half a year, or of six months from the date of the corresponding feast in the middle of the year, without stating the day when the tenant is to quit, although the intermediate time be not exactly half a year, or six months from feast to feast, being the usual half-yearly computation. In the case of Howard w. Wemsley, 6 Esp. 53, when the notice was to quit "on or about the expiration of six calendar months from the 29th of September," (the tenancy commencing March 25,) the court ruled the word calendar to be surplusage, and held the notice good.

Service of a notice to quit upon the tenant's wife at the house demised Service of is good service.—Pultney v. Shelton, 5 Ves. jun. 261, n. When the te-notice. nancy expires by reason of a notice to quit, the lesser must prove the tenancy of the defendant, the service of the notice, and its contents, (and if given by an agent, the agent's authority,) and that the notice and the year of the tenancy expire at the same time. When, also, the notice is for a shorter period than half a year, or expires at any other period than the end of the year of the tenancy, it will be necessary to show the custom of the country where the lands lie, or an express agreement by which such notice is authorised.

The mere leaving a notice to quit at the tenant's house with a servant, Leaving without further proof of its having been explained to the servant, or that notice at it came to the tenant's hands, is not sufficient.—Doe d. Buross v. Lucas, the tenant's 5 Esp. 153. But where the tenant of an estate holden by the year, has a

dwelling

dwelling house at another place, the delivery of a notice to quit to his servant at the dwelling house, is strong presumptive evidence that the master received the notice.—Jones d. Griffith v. Marsh, 4 T. R. 464. Delivery of a notice to quit to the servant is sufficient, though the terms might not have been informed of it until within the half year after its expiration, especially as the servant might have been called, but was not.— Doe d. Neville v. Dunbar, M. & M. 10.

Waiver of notice by landlord.

If a landlord receive rent accrued due, after the expiration of a notice to quit, it is a waiver of that notice.—Goodright d. Charter v. Cordwest, 5 T. R. 219. So if he distrain for such rent. Zouch d. Ward v. Walingale, 1 H. B. 311. But the mere acceptance of rent by a landlord, for occupation subsequent to the time when the tenant ought to have quitted, according to the notice given him for that purpose, is not of itself a waiver on the part of the landlord of such notice, but matter of evidence only, to be left to the jury, under the circumstances of the case.—Doe d. Cheney v. Batten, Cowp. 243. 9. East, 314. z.

Receipt by agent.

The receipt by an authorised agent, of rent due at Michaelman, a prima facie a waiver of a notice to quit at Midsummer.—Doe d. Ash s. Calvert, 2 Camp. 387. But where rent is usually paid at a banker's, if the banker, without any special authority, receives rent accruing after the expiration of a notice to quit, the notice is not thereby waived — Id. If at the end of a year, where the tenancy is from year to year, the landled accept another person as tenant, in room of the former tenant, without any surrender in writing, such acceptance shall be a dispensation of any notice to quit.—Sparrow v. Hawkes, 2 Esp. 505.—A landlord gase notice to quit different parts of a farm, at different times, which the defendant neglected to do in part, in consequence of which the landerd commenced an ejectment, and before the last period mentioned in the notice was expired, the landlord, fearing that the witness by whom be was to prove the notice would die, gave another notice to quit at the respective times in the following year, but continued to proceed with his ejectment, it was held the second notice was no waiver of the first.—Ded. Williams v. Humphreys, 2 East, 237. A landlord of premises, about to sell them, gave his tenant notice to quit on the 11th of October, 1805: but promised him not to turn him out unless they were sold, and not being sold till February. 1807, the tenant refused on demand to deliver up p session, and on ejectment brought, it was held that the promise (which was performed) was no waiver of the notice, nor operated as a liceuse to be on the premises otherwise than subject to the landlord's right of acting on such notice if necessary, and therefore that the tenant not having delivered up possession on demand after a sale, was a trespasser from the expiration of the notice to quit.—Whiteacre d. Boult v. Symonds. 10 East, 13. And a second notice delivered to a tenant, after the expiration of a former notice to quit, on a subsequent day, or to pay double rest, is no waiver of such first notice, or of the double rent which has accrued under it.—Messenger v. Armstrong, 1 T. R. 53.

If after the expiration of a notice to quit the landlord gives the tenant

Fresh notice

If after the expiration of a notice to quit the landlord gives the tenant a fresh notice, that unless he quit in fourteen days he will be required to pay double value, the second notice is no waiver of the first.—Doe d. Digby v. Steele, 3 Camp. 117. But a second notice to the defendant, to quit at Michaelmas, 1811, is a waiver as to him of a former notice given to the original lessee, from whom he claims by assignment to quit at Michaelmas, 1810.—Doe d. Brierley v. Palmer, 16 East, 53. In an action of ejectment the plaintiff must be non-suited, if it be proved that a notice to quit at the end of six months was given by the lessor of the plaintiff to the occupier of the premises, a short time before the bringing of the action.—Doe d. Scott v. Miller, 2 C. P. 348. A notice by the owner of premises, requiring a tenant in possession, "to leave the premises he then rented of the owner, at Lady-day next," is not conclusive evidence of a demise from a testator to the party in possession.—Doe d. Wilcockson v. Lynch, 2 Chit, 683; and see Bishop v. Howard, 3 D. & R. 293. 2 B. & C. 100. A notice to quit is not prime facie evidence of the period of the year when the tenancy commenced.—Doe d. Ash v. Calvert, 2 Camp. 387. A notice was given on the 22nd of March, by a landlord to his tenant, to quit at the expiration of the current year. A declaration

Effect in 'evidence.

When no

To Mr. C. D.

I do hereby require you to quit, and deliver up Another possession of the house and premises, which you hold as tenant under me, situate, &c., on the day of, &c., next, or at the expiration of the current year of your tenancy. Dated, &c.

To, &c.

I hereby give you notice that I shall quit pos- A notice by session of the messuage or tenement and premises his intention which I now hold of you, situated at, &c., at the to quit. expiration of six months from the date hereof, (that 350, 351, 352 is to say,) on the ——day of ——now next ensuing, $\frac{11 \text{ Geo. 2}}{19, \text{ s. } 18}$. being the quarter day at which I commenced my tenancy of the said premises. Dated this —— day of —, 18—.

To, &c. Take notice that, by virtue of the proviso con- Notice by

in ejectment laying the demise on the 1st of November, was on the 16th objection of January following, served upon the tenant, who, at the time, made no objection to the notice to quit; but said, he should go ont as soon as he could fit himself; this was held to be prima facie evidence, that the tenancy commenced at Michaelmas, and was determined before the day of the demise.—Doe d. Baker v. Wombwell, 2 Camp. 559. So if the notice to quit be served personally on the tenant in possession, and he make the demise.—Doe d. Baker v. Wombwell, 2 Camp. 559. So if the notice to quit be served personally on the tenant in possession, and he make no objection to it, it is prima facis evidence to be left to the jury that the tenancy commenced at the season of the year when the notice to quit expires.—Doe d. Clarges v. Forster, 13 East, 405. S. P. Thomas d. Jones v. Thomas, 2 Campb. 647. A notice desiring the tenant to "quit the premises which you hold under me." does not recognise a subsisting tenancy from year to year subsequent to the term, but is a mere demand of possession.—Doe d. Godsell v. Ingliss, 3 Taunt. 54.

A notice to quit, in writing, signed by the party giving it, and attested by a witness, must be proved by calling that witness; or, his absence must be accounted for; proof that it was served on the tenant, that he read it, and did not object to it, is not sufficient.—Doe d. Sykes v. Durnford, 2 M. & S. 62. Where it is the usual course of practice in an attorney's office for the clerks to serve notices to quit on tenants, and to in-

torney's office for the clerks to serve notices to quit on tenants, and to indorse on duplicates of such notices the fact and time of such service, and on one occasion the attorney himself prepared a notice to quit, to serve on a tenant, took it out with him, together with two others prepared at the same time, and returned to his office in the evening, having endorsed on the duplicate of each notice a memorandum of his having delivered it to the tenant; and two of them were proved to have heart delivered by to the tenant; and two of them were proved to have been delivered by him on that occasion; it was held on the trial of an ejectment, after the attorney's death, that the endorsement so made by him was admissable to prove the service of the third notice.—Doe d. Patteshall v. Turford, 3 B. & Adol. 890. In an ejectment against a weekly tenant, the notice proved was to quit on Wednesday the 4th of August, the witness who was called to prove that Wednesday was the expiration of the current week of the tenancy said, "that he guessed the defendant came in about Tuesday or Wednesday, but had no recollection which." This was held insufficient.—Doe d. Finlayson v. Bayley, 5 C. & P. 67.

lessee of his tained in the indenture of lease, dated, &c., and quit, pursu made between you and me, of the messuage, farm viso in lease. I and premises, now in my occupation, situate, &c., I shall deliver up possession of the said farm and premises, on the—day of, &c., next ensuing, being the end of the first seven years of the term Dated this —— day of granted by the said lease. **---,** 18 ---.

To Mr. A. B.

(5.)Notice by tenant of his quit. (See p. 669.)

I hereby give you notice, that on ——day of – intention to next, I shall quit and deliver up possession of the messuage or tenement and premises which I now hold of you, situate at, &c., in the parish of, &c., in the county of, &c. Dated, &c.

To, &c.

(6) Form of notice to tenant to quit where the comof the tenancy is uncertain.

I hereby give you notice to quit, and deliver up to me on the 25th day of December next, the peaceable and quiet possession of all those two messuages, menorment tenements on dwelling-houses, [or farm houses, lands and premises,] with the appurtenances situate in — in the parish of — in the [borough of, &c., or county of, &c., which you lately held under T.B., and which you now hold of me as tenant from year to year provided your tenancy originally commenced at that time of the year, or otherwise, that you quit and deliver up to me the peaceable and quiet possession of the said premises, at the end of the year of your tenancy, which shall expire next after the (See p. 666.) end of one half year from the time of your being served with this notice. Dated, &c.

To, &c.

(7.)Another form.

I hereby give you notice to quit and deliver up to me at the expiration of the current year of your tenancy, which shall expire next after the end of one half year, from and after your being served with this notice, the possession of all that messuage, tenement, or dwelling-house, lands, hereditaments. and premises, situate, &c., which you now rent of or hold under me. Dated, &c.

Mr. C. D.

You are hereby required to quit and deliver up Notice to me on the —— day of, &c., the possession of the tenant at premises which you now hold of me as tenant at will, will.

[or "by virtue of an agreement," or "lease," as the case may be,] namely, a messuage and garden with the appurtenances, [or "farm house, lands, and premises," describing the premises,] situate in the parish of, &c., in the county of, &c., now occupied by you, [or your undertenant, as the case may be,] or to quit the said premises at the expiration of the current year of your tenancy.

To, &c.

I hereby give you notice of my intention to de-Notice to a termine on the —— day of —— next, the tenancy joint tenant under which you now hold of me, of an undivided common to moiety or half part, (as the case may be,) of and quit. in ALL that, &c. Dated, &c.

Mr. C. D.

I do hereby as the agent for and on behalf of By an agent your landlord, A. B., of, &c., give you notice to of the quit and deliver up possession of the premises, which you now hold under the said A. B., situate at, &c., and now being in your occupation, on the day of, &c., or at the expiration of the current year of your tenancy. Dated, &c.

To, &c,

I hereby give you notice to quit and deliver up From landto E. F., of, &c., on the —— day of —— next up possesensuing, the possession of the messuage or dwelling sion to a
house, with the appurtenances which you now hold
of me, situate at, &c. Dated, &c.

To Mr. C. D.

I do hereby give you notice (if as agent add, A general "As the agent for and on the behalf of A. B., of, &c., form of notice to quit. your landlord") to quit and deliver up on the ——day of—, which will be in the year of our Lord 18—, the peaceable possession of all that messuage, tenement or dwelling house, with the land and heredita-

ments thereunto belonging, situate in the parish of -, in the county of ----, (if by agent, "which you now rent of or hold under the said A.B.") and if the commencement of the tenancy is uncertain add, "Provided your tenancy originally commenced at that time of the year, or otherwise, that you quit and deliver up possession of the said messuage and premises at the end or expiration of the current year of your tenancy, which shall expire next after the end of one half year, from and after your being served with this notice." Dated, &c.

(13.)A notice by a landlord to his tenant, session of term, (the commencement being

or pay

To, &c. I hereby give you notice to quit and deliver up to me on the --- day of --- next ensuing, the to quit post peaceable possession of the messuage or tenement the premises and premises situate at, &c., which you now rent of on the expi-ration of his or hold of me, if your term or tenancy commenced on that feast day of the year, and if not, then at such feast day in the year at which your said uncertain,) term or tenancy commenced, which shall happen or pay double the at or next after the end of one half year from yearly value the date hereof, and that in default thereof I shall require you to pay double the annual value of the said premises thenceforth until you deliver up possession, by virtue of the statute in that case made and provided. Dated this —— day of ——. 1838.

(14.)To quit lodgings To Mr. C. D.

I hereby give you notice to quit and deliver up, on or before the —— day of —— next, the room or apartments and other tenements, which you now hold of me in this house, (as the case may be). Dated, &c.

(15.) Notice by the tenant to quit lodgings,

To, &c. This is to give you notice that on —— day of ---- next, I shall quit and deliver up possession of the rooms and apartments, and other tenements, which I now hold of you in your house.

MISCELLANEOUS FORMS.

(1.)

To quit, or in Default to pay double Rent or

To, &c.

I hereby give you notice to quit and deliver up, To quit or on or before the —— day of —— next ensuing, pay double. the possession of the messuage, lands, tenements, and hereditaments, with the appurtenances which you now rent of or hold under me, situate at ----, in the parish of —, in the county of S., and in failure whereof, I shall require and insist upon you paying from thenceforth, for the same premises, the yearly rent of £---, being double the former rent value. or value(k) thereof, for so long time as you shall keep possession of the said premises after the expiration of this notice, according to the form of the statute in such case made and provided. Dated, &c.

(2.)

Notice from a Housekeeper to his Lodger to quit Apartments or pay double Rent.(1)

I hereby give you notice to quit and deliver up, To quit on or before the —— day of, &c., next, the apartments and other the tenements which you now hold of me in this house, in default whereof, I shall require you to pay to me for the same, the net

(f) Although the statute 4 G. II., c. 28, as to double value, does not Lodgings. apply to a tenancy for a less term than a year, yet the housekeeper may fix the rest he intends to insist upon, in default of the lodgers quitting

pursuant to notice.

3 L

⁽k) The statute, 4 Geo. II., c. 28, gives double the yearly value of the Stat. 4. G. premises to be recovered by action of debt, where the tenant shall not II., c. 28. quit, pursuant to his landlord's notice, which notice need not set forth that the landlord will insist upon double value, as the act enables him to recover the same without such statement; but it may be inserted in order to show what he considers as the double value of the premises, and of which, the rent in general is the true criterion.

monthly (or "quarterly" as the case may be) sum of —, being double the present monthly (or quarterly) rent thereof, for such time as you shall thereafter continue to retain possession. Dated, &c. To, &c.

(3.)

Notice by a Landlord to the Tenant to repair the Premises, in Pursuance of a Covenant in the Lease made between them, or in Default that he will re-enter.

To repair.

To, &c.

I hereby give you notice forthwith, (or say, on or before, &c.,) to put into good and sufficient tenantable order and repair, all and every part of the premises which you hold of me, (or as the case may be,) under an indenture of lease, bearing date the—day of—, and made, or expressed to be made, between, &c., and more especially, [here state any particular dilapidations there may be,] and that in default thereof, I shall re-enter(m) into the said premises, as of my former estate, in pursuance of the proviso in the said indenture contained for that purpose; but without prejudice to any other remedies I may have under the same indenture, or otherwise, by reason of such default. Dated this—day of, &c.

Waiver.

(m) A forfeiture incurred by the breach of a general covenant to keep the premises in repair, is not waived by a notice given under a covenant to repair within three months.—Roe d. Goatly v. Paine, 2 Camp. 550. But his a question, whether the acceptance of rent which became due subsequently to a forfeiture, by not repairing within three months after notice, is not a bar to an action of ejectment.—Fryer d. Harris v. Jeffreys, 1 Esp. 353. Where a landlord, finding the premises out of repair, gave the tenant three months notice to repair, pursuant to his covenant; it was held, first, that he could not maintain ejectment for a forfeiture, until the three months had elapsed; and second, that the notice was a waiver of the breach of the general covenant to repair.—Doe d. Morecroft v. Meux, 7 D. & R. 98. 4 B. & C. 606. 1 C. & P. 346.

Suspension of right of entry.

It seems a right of re-entry acquired by an omission, to repair theer months after notice is suspended, but not societed, by an agreement to allow the tenaut further time to repair.—Doe d. Rankin v. Brindley, I Nev. & M. 1. 4 B. & Adol. 84.

Acceptance of reut.

The right of re-entry will not be waived when the suspension has been by agreement or so, nor is it waived by the acceptance of rent accruing due before the expiration of the three months.—Id.

(4.)

Common Form of Notice by Landlord to Tenant to repair Premises.

To, &c.

I do hereby give you notice, (n) and require you Common to put in good and tenantable order and repair ALL time to reand singular the messuage or tenement and pre-pair. mises which you now hold of me, situate at, &c., particularly, &c., [describing the repairs necessary to be done according to the fact].

Witness my hand, &c.

(5.)

Notice by Surveyor of Landlord to repair, &c.

To Mr. C. D., tenant of the house situate, &c., [or By land-to Mr. E. F., under-tenant, &c.,] belonging to lord's surveyor.

A. B., of ——, esquire.

As surveyor to the said A. B., esquire, and on his behalf, I do hereby give you notice, and you are hereby required to do and perform before the ——day of March instant, (or next ensuing the date of this request or notice,) the following repairs, and re-instatement of waste, dilapidations, and want of repairs, at and to the messuage or tenement which you now hold of the aforesaid A. B., situate and being, &c., according to the following schedule or specification of dilapidations made by me, as the surveyor of the said A. B., on a survey made of the aforesaid premises on the —— day of, &c. As witness my hand this ——day of ——, 1839.(0)

Schedule above referred to.

⁽n) See p. 674.
(o) To be signed with the name of the surveyor, thus: "E. F., surveyor to the said A. B."

(6.)

Notice by a Landlord to his Tenant to pay Rent due upon Lease; or in Default, that Landlord will re-enter pursuant to a Proviso for Reentry in the Lease for such Purpose.

To pay rent To, &cc. due to landlord,

I hereby give you notice, that unless you pay to me the sum of ----, being ---- years' rent due at last, for the messuage, or tenement and premises, you now hold of me, situate at, &c., I shall enter upon the said premises, as of my former estate, in pursuance of my power so to do contained in the indenture of lease, by virtue of which you hold the said premises; but this notice and such entry are to be without prejudice to any other remedies I have or may be entitled to for recovering the said rent or premises in the mean time. Dated, &c.(p)

(7.)

Notice by a Mortgagee to a Tenant to pay Part of his Rent in Satisfaction of Interest.

To, &c.

Notice by a mortgagee.

I hereby give you notice, (q) that under or by virtue of an indenture dated, &c., and made between, &c., the premises now in your occupation, situated, &c., were conveyed to me, my heirs (ar

Another form to pay rent

Another form by a mortgagee. (p) Another form: "Take notice, that unless you pay, or cause to be paid, unto me, on or before the —— day of, &c., instant, the sum of, &c., being one year's rent due on the —— day of, &c., last past, for the measuage, or tenement and premises, which you hold of me, at the yearly rent of, &c., situate, &c., I shall claim and insist upon such forfeiture thereof as I may be by law entitled to. Dated," &c.

(q) Another form: "I hereby give you notice, that I am a mortgages of the premises now in your occupation, situated, &c., for the sum of, &c., owing to me from A. B., of, &c., by virtue of an indenture bearing date the —— day of, &c., and made between, &c., and for which sum one half year's interest after the rate of four pounds ten shillings per cent. per annum was due to me on the —— day of, &c., last past. And I hereby require you to pay to me the sum of, &c., being the amount of such interest in part of the rent payable by you for the said premises, on the next day of payment of such rent, and so on until further notice from me in that behalf; and in default thereof, I shall pursue such remedies as are allowed by law for recovering the same. Dated, &c.

executors, administrators) and assigns, for securing to me the payment of the sum of, &c., by the said A. B., your landlord, and interest for the same, after the rate of £ --- per cent. per annum, which same principal sum is still due to me, and the sum of — for — months' interest thereupon. And I do require you to pay to me the said sum of — out of any rent which may now be owing by you to the said A. B., for the said premises; and if none be now due, then out of the next rent which shall be payable by you to him, and that on the day of such rent becoming due; and further, that you do thenceforth continue to pay your said rent to me, my executors, administrators, and assigns, instead of the said A. B., his heirs (executors, administrators) or assigns, as and when the same shall become due, until notice from me to the contrary thereof. Dated the —— day of, &c.(r)

Notice to be affixed on Premises when deserted by Tenant. [See 11 G. II., c. 19, s. 16.](s)

Take notice, that upon the complaint of A. B., of Notice when M., in the county of N., made unto us, E. F. and premises are deserted. G. H., esquires, two of his majesty's justices of the peace for the said county, that you, the said C. D., have deserted the messuage and tenement called O.,

(r) To be directed to the tenant of the premises, and signed, "E. F., Direction.

(s) By this statute, if any tenant at rack rent, or where the rent reserved shall be full three fourths of the yearly value of the demised premises, who shall be in arrear for one year's rent, shall desert the premises, 19, a. 16.

and leave the same uncultivated or unoccupied, so as no sufficient distress and leave the same uncultivated or unoccupied, so as no sufficient distress can be had, two justices (having no interest in the premises) may, at the request of the lessor or landlord, or his bailiff or receiver, go upon and view the same, and affix on the most notorious part of the premises notice in writing what day (at the distance of fourteen days at the ledst) they will return to take a second view; and if on such second view the tenant, or some person in his behalf, shall not appear and pay the rent, or there shall not be sufficient distress on the premises, then the said justices may put the landlord or lessor into possession, and the lease to such tenant, as to such demise, shall from thence be void. [By statute 57 G. III., c. 52, the provisions of this statute are extended to tenants who shall be in arrear one of the provihalf year's rent, and who shall hold under any demise or agreement sions of this whether written or verbal, and although no right or power of re-entry be statute by reserved or given to the landlord in case of non-payment of rent. See 57 G. 111. note (g) to p. 410.] note (g) to p. 410,

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consisting of —, situate, lying, and being, at M. aforesaid, in the county aforesaid, unto you demised at rack rent by the said C. D.; and that there is in arrear and due from you the said C. D., unto the said A. B., one —— year's rent for the said demised premises, uncultivated and unoccupied, so that no sufficient distress can be had to countervail the said arrears of rent. We, the said justices, (having no interest, nor either of us any interest in the said demised premises,) on the said complaint(t) as afore-

View.

Information and complaint.

Record of the proceed-ings.

County of) Be it remembered, that on the —— day of ——, in the second year of the reign of our sovereign lady Victoria, of the united kingdem of Great Britain and Ireland, queen defender of the faith, at ——, in the said county, A. B., of M., in the said county of N., complained to us, B. F. and G. H., esquires, two of the justices of our said lady, assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemennors, in the said county committed, that the said A. B. did demise at rack runt uses C. D., of, &c., husbandman, a messuage and tenement called, &c., consisting of, &c., situate, lying, and being, at, &c., aforesaid, in the county aforesaid; and that on the said — day of, &c., in the year aforesaid, there was in arrear, and due unto the said A. B., from him, the said C. D., the tenant of the said demised premises, one —— year's rent thereof, and that he, the said C. D., hath deserted the said demised premises, and left the same uncultivated and unoccupied, so as no sufficient distress could be had to countervail the said arrears of rent; subervapon the said A. B. then and there to wit on the said — day of — in the year aforesaid, at —— aforesaid, in the county aforesaid, requested of us, the said justices, that a due remedy should be provided according to the form of the statute in that case made and provided; which complaint and request by us, the aforesaid justices, being heard, we, (Asoing no interest, nor either of us having any interest in the said demised premises, and then and there upon our own proper view did find the said complaint to be true, and did then and there affix on the most notorious parts of the mid demised premises, to wit, upon the outer door of the mansion house, a notice in writing under our hands and seals that we, the said justices, ea the — day of —— next would return and take a second-view thereof;

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said, and at the request of the said A. B., have this day come upon and viewed the said demised premises, and do find the said complaint to be true, and on the —— day of this present month of we shall return to take a second view thereof; and if, upon such second view, you, or some person on your behalf, shall not appear and pay the said rent in arrear, or there shall not be sufficient distress on the said premises, then we, the said justices, will put the said A. B. into the possession of the said demised premises, according to the form of the statute in such case made and provided. ness whereof, we have hereunto set our hands and seals, and have caused this notice to be affixed on the outer door of the mansion house, (the same being the most notorious part of the said premises.) this — day of —, in the — year of the reign of our sovereign lady Victoria, &c.

(9.)

Form of Demand of Possession of Premises prior to proceeding by Action of Ejectment under Stat. 1 G. IV., c. 87.

I do hereby, (or if by agent say, "as agent for see p. 368. Mr. A. B., your landlord, and on his behalf,") ac- 1 G. IV., c. cording to the statute in that behalf, demand and require you immediately to give and deliver up to me (or the said A. B.) possession of the dwelling house (lands) and premises, with the appurtenances, situate, &c., which you hold as tenant

upon which said — day of — in the year aforesaid, we did return and take a second view of the said premises, and there, upon our own proper view, did find that he, the said C. D., did not appear, nor any person on his behalf, to pay the said rent in arrear, and that there was no sufficient distress upon the said premises, nor upon any part thereof, to countervail the said arrear of rent; therefore, we, the said justices, at — aforesaid, in the county aforesaid, on the — day of — aforesaid, did put the said A. B. into possession of the said demised premises, according to the form of the statute aforesaid. In witness whereof, we, the said justices unto this record, do set our hands and seals the — day of —, in the year of our Lord 1839. (The above form of record of the proceedings should be made by the justices, to be produced afterwards, in case an action should be brought against the landlord by such tenant, which being produced in court, will be proper evidence in all cases.)

thereof, (u) under and by virtue of a lease bearing date, &c., (by him,) to you made in that behalf, your term therein having expired. Dated, &c.

(v)

(10.)

Notice by Landlord of his Intention to apply to Justices to recover Possession of Premises pursuant to Statute 1st & 2nd Vict., c. 72.

Notice according to let & 2nd Vict, c. 72. (See p. 422.)

I, A. B., (w) do hereby give you notice, that unless peaceable possession of the, &c., [describing the premises and situation,] which was held of $me_{x}(x)$ under a tenancy from year to year, (or as the case may be,) which expired by notice to quit from $me_{\cdot}(y)$ on the —— day of —— last, and which tenement is now held over and detained from $me_{x}(z)$ on or before the expiration of seven clear days from the service of this notice, I shall on Wednesday next, the —— day of, &c., at twelve of the clock of the same day, at, &c., apply to her majesty's justices of the peace, acting for the (a) district of, &c., in petty sessions assembled, to issue their warrant directing the constables of the said district to enter and take possession of the said tenement, and to eject any person therefrom. Dated, &c.

To Mr.

 $\mathbf{A}.\ \mathbf{B}.(b)$

Variations.

(u) If the tenancy expired by a notice to quit say, " As tenant thereof from year to year, under and by virtue of an agreement in writing dated, &c., and which tenancy of and in the same has been determined by a notice to quit given to 'or by 'you in that behalf."

(v) To be signed by landlord, or if by agent thus: "E. F., agent for the

(w) If by agent say, "I, R. S., as agent to A. B."
(x) If by agent say, "Of the said A. B."
(y) If by agent say, "From the said A. B."
(z) If by agent say, "From the said A. B."
(a) Here insert the district, division, or place, in which the premises. or

any part thereof, are situate.

(b) To be signed by the owner or agent, as the case may be. (See p. 4)8 for this act.)

(11.)

Notice by Landlord to a Sheriff (in Possession, under an Execution) of Rent being due.(c)

To A. B., esquire, sheriff of the county of, &c. (d) Notice to I hereby give you notice, that there is now due rent being and owing to me(e) from C.D., the person to whom due. the goods belong, of which you are now in possession, by virtue of a writ of fire facias, returnable, &c., the sum of £ ----, for one year's rent in arrear at - last; and I hereby request that you will pay the same to me before such goods be removed from the premises. Dated this — day of, &c.

(c) By the statute 8 Anne, c. 14, it is enacted, that " no goods upon any 8 Anne, c. tenement leased shall be taken by an execution, unless the party at whose 14, provid-suit the execution is sued out shall, before the removal of such goods, pay ing for rent to the landlord of the premises, or his bailiff, all moneys due for rent on in case of the remises, provided the arrears do not amount to more than one year's executions.

rest; and if the arrears shall exceed one year's rent, then the party paying to the landlord, or his bailiff, one year's rent, may proceed to execute his judgment; and the sheriff is required to levy and pay to the plaintiff as well the money paid for rent as the execution money." Therefore, the landlord must not distrain, but must by this statute give a notice to the sheriff to the above effect.

(d) If the above notice be not given, the sheriff will not be bound to re. When tain the rent on the landlord's account; but if properly attended to, the sheriff is sheriff is bound either to pay the landlord his rent, or to vacate the pre-bound. mises, which is generally decided by the value of the property found thereon.

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(e) If the notice be given by a receiver, it may be thus:—
"To the sheriff of the county of, &c., and to Mr. C. D., his officer, and Notice by a all others whom it may concern. receiver.

"Take notice, that there is due to E. F., and the mortgagees of his estates, in the parish of, &c., in the county of, &c., from C. D., the defendant, the sum of, &c., for —— years rent due at Christmas last past, which you are to pay to me, as receiver of the rents of the same estates. Dated," &c.—See Colyer v. Sheer, 2 Brod. & Bing. 68.

PROVISOES.

(1.)

Proviso for determining a Lease in Case of Rent being in Arrear, or of the Lessee's assigning or underletting without Consent, or failing to observe Covenants, &c.(f)

In case of rent being in arrear.

PROVIDED ALWAYS, nevertheless, and these presents are upon this express condition, that if the

Lord Ken-Doe v. Galliers, as to provisoes in restraint

(f) In the case of Roe v. Galliers, it was observed by Lord Kenyon. yon's ob. with reference to terms for years, "That the general principle was clear servations in that the landlord having the jus disponendi might annex whatever condi tions he pleased to the grant, provided they were not illegal or unreasonable; that there was no authority for rendering a condition in restraint of a lessee's assignment unreasonable; that it was reasonable a landlerd should exercise his judgment with respect to the person to whom he trusts the management of his estate; and the landlord may well provide that the tenant shall not make him liable to any risk by a voluntary assignment, or by any act which obliges him to relinquish the possession; if it be reasonable to a positive assignment, it is equally or more so to restrain an act as of bankruptcy, the consequence of which is an assignment. A creditor must rely upon the bare possession of the land by the occupier, as a proof of the interest he has in it, if he wishes to know that he must look into the lease, and he would there find its extent and liability. A man into the lease, and he would there find its extent and liability. A man does not get credit merely for the occupation of land, but from the interest he has in it. The stock upon a farm may, indeed, induce a credit, but that will not govern the case of the lease. It is clear that the land-lord parts with the term on account of his personal confidence in his tenant; he relies on his honesty, approves of his skill in farming, and he has a right to guard against his farm falling into other hands. Put the suppositious case of a lease made for twenty-one years, on condition that the tenant should so long continue to occupy the land personally, there could be no objection made, "continued he, "to such a condition, for the personal confidence is the very motive of granting the lease. And again:—an sonal confidence is the very motive of granting the lease. And again;—an assignment in law not being a breach of a general condition not to assign, the landlord therefore, does well as far as he can by the particularity of the words contained in his covenants; and a proviso against the le becoming bankrupt is not contrary to any express law to reason or public policy. The landlord in such case parts with his term on account of his personal confidence in his tenant, which is manifestly the case in all leases where clauses against alienation are inserted."—See Roe d. Hunter v. Galliers, 2 T. R. 133; and see Church v. Brown, 15 Ves. jun.

It seems provisoes for re-entry in leases are to be construed like other

Construction of pro-Visces.

Underlease.

covenants; not with the strictness of conditions at common law.—Doe d. Davis v. Elsam, M. & M. 189.

A covenant not to assign, transfer, set over, or otherwise do or put away the lease or premises, does not extend to an underlease granted for part of the term.—2 Black. Com. 766. 3 Wilson, 234. But if the lease contain a proviso that the lessee and his administrators shall not "set, let, or sign over," the administrators of the lessee cannot underlet without a forfeiture.—3 T. R. 425. Yet if the lessee by will devise the term without the lessor's consent, this will not be a breach of the covenant.—Style, 483. And it appears that any assignment by act of law is not a breach of this Assignment covenant; as, if the lessee become bankrupt, an assignment by the as- by act of signess under his commission is not a breach of covenant.—3 Wilson, 736; law. and see pp. 152—154, and notes infra.

A provise in a lease for re-entry on a condition broken, can only ope-Operation of rate during the term, and vanishes when that ends.—Johns v. Whitty, 3 provise. Wils. 127. It seems that in the construction of a provise in lease, that in

certain events the leuse shall cease, and the lessor may re-enter, that the lease is only voidable.—Daken v. Cope, 1 Russ. 170.

A proviso in a lease, after stating that in certain events the term should Re-entry. cease, determine, and be utterly void, continued in these words: "And it shall be lauful to and for the landlord to re-enter." This gives the landlord a right to enter or not at his election.—Arnsby v. Woodward, 6 B. & C. 519. 9 D. & R. 536. And where a lease for years contained the common proviso, "That it shall and may be lawful for the lessor to re-enter," or a proviso. "That the term shall cease and determine if the lessor pleases," the lease will be only voidable by a breach of covenant, and the forfeiture may be waived by a subsequent acknowledgment of a tenancy.—Doe d. Bristow v. Old, Ad. Eject. 171. And in another case, where a proviso in an agreement that the tenant should within a certain time erect a shop in front, &c.; and that if he did not do so, it should be lawful for the landlord, or his agents, to re-take possession of the said premises, and the agreement should be null and void, was held to make it a lease voidable only at the election of the lessor.—Doe d. Nash w. Birch, I Mees. & Wels.

Where there is a proviso in a lease that on non-payment of rent the Cesser of term shall cease, the lessor, and not the lessee, has the option of deter-term. mining the lease upon a breach made.—Reid v. Parsons, 2 Chit. 247; and

see Doe d. Green v. Baker, 2 Moore, 189. 8 Taunt. 241.

A lease contained a clause of re-cutry in case the term of years thereby When pregranted should be extended or taken in execution; and before the end of mises taken the term the sheriff entered the premises under a writ of extent against in execution the lessee, at the suit of the grown, held an inquisition, and seized the lessee's interests into the king's hands; held that this proceeding was a taking in execution within the latter clause of the condition, and that the

term was determined and forfeited to the lessor.—Rex v. Topping, M'Clel. & Young, 544; and see Davis v. Eyton, 4 M. & P. 820. 7 Bing. 154.

A lessor who has demised his whole interest, subject to a right of re- Who may entry on breach of a condition, may enter on the condition being broken, re-enter. though he have no reversion.—Doe d. Freeman v. Bateman, 2 B. & A. 168. (But the relation of landlord and tenant within the ejectment statutes can only subsist where there is a reversion.—Fawoett v. Hall, 1

Alcock & Napier, 248.)

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Where in a lease a power of re-entry for a breach of covenant is reserved Waiver. to the lessor, a forfeiture may be waived, as the lease is thereby rendered voidable only.—Doe d. Bryan v. Bancks, 4 B. & A. 401. Gow. 220. But

it is otherwise where the lease is declared absolutely void.—Id.

Acceptance of rent after a forfeiture is a waiver of the forfeiture.— Acceptance Arnsby v. Woodward, 6 B. & C. 519. 9 D. & R. 536. If the fact of for- of rent. feiture was known to the lessor at the time.—Roe d. Gregson v. Harrison, 2 T. R. 425. S. P. Goodright d. Walter v. Davids, Cowp. 803. And so although the acceptance of the rent was from a stranger.—Fawcett v. Hall, Alcock & Napier, 248. Doe d. Cheney v. Batten, Cowp. 243. 9 East, 314, n. But if ejectment is brought on a forfeiture of a lease, and after the bringing of such ejectment the landlord accept rent, it is no waiver of the forfeiture.—Doe d. Morecroft v. Meux, 1 C. & P. 346. 7 D. & R. 98. 4 B. & C. 606.

Yet upon a clause of re-entry on a breach of covenant, ejectment may Continuing be supported in respect of a continuing breach; as, by user of rooms in a breach. manner prohibited by the lease, though rent has been accepted with knowledge of the original breach.—Doe v. Woodbridge, 4 M. & R. 303. S. C. som. Doe d. Ambler v. Woodbridge, 9 B. & C. 376.

It seems a distress and continuance in possession might be a waiver of Distress. an existing forfeiture, but not so as to any right which accrued subse-

said yearly rent or sum of £ —— hereinbefore reserved, or any payment or payments thereof, shall be in arrear by the space of twenty-one days next

Or on assignment-

after the same ought to have been paid as aforesaid, or if the said A. B., his executors, administrators, and assigns, shall at any time or times, during the continuance of this demise, transfer or assign over, or underlet the premises hereinbefore demised, to any person or persons whomsoever, for all or any part of the said term of twenty-one years, without the license or consent in writing of the said C. D., his heirs or assigns, for that purpose first had and Or on bank- obtained; or if the said A. B., his executors, admiruptey or in-nistrators, or assigns, shall become a bankrupt or bankrupts, or take advantage, or attempt to take advantage, of the now existing or any future act of parliament for the relief of insolvent debtors, or shall compound his debts, or assign over his estate and effects for payment thereof, or any execution

quently.—Doe d. Taylor v. Johnson, 1 Stark. 411; and see Zouch d. Ward v. Willingale, 1 H. Black. 311. But taking an insufficient distress after the forfeiture for rent accruing before, is not a waiver of the right to re-

enter.—Brewer d. Onslow (Lord) v. Eston, 3 Doug. 230.

Subsequent

A lessor who has a right of re-entry reserved on a breach of a covenant A lessor who has a right of re-entry reserved on a breach of a covenant underletting not to underlet, does not by waiving his re-entry on one underletting loss his right to re-enter on a subsequent underletting. Nor by waiving his right to re-enter on a breach of covenant to repair, does he waive his re-entry on a subsequent want of repairs.—Doe d. Boacawen v. Bliss, 4 Taunt. 735. (As to demand of rent by landlord on the day it becomes due, prior to re-entry in default of payment, see the case of Doe d. Forster v. Wandlass, 7 T. R. 117; and that such demand may be made by a stranger if on the land.—See Doe d. Brook v. Brydges, 2 D. & R. 29. And that such demand may be dispensed with where the provise in the lease was, "Although no legal or formal demand should be made."—See Doe d. Haines v. Musters, 4 D. & R. 45. 2 B. & C. 490; and see Ride v. Fart, 6 M. & S. 121. And that where the rent was payable quarterly, and a demand was made of more, (on the day limited in the usual provise,) it was mand was made of more, (on the day limited in the usual proviso,) it was held that only one quarter's rent should have been demanded, and that at sunset.—See Doe d- Wheeldon v. Paul, 3 C. & P. 613; and see pp. 430, 497, notes.

Rent in AFTEST.

Upon a lease reserving rent payable quarterly, with a provise that if the rent be in arrear twenty one days, next after the day of payment being lawfully demanded, the lessor may re-enter; it was held that five quarters being in arrear, and no sufficient distress on the premises, lessor might re-enter without a demand.—Doe d. Scholesield v. Alexander, 2 M. & R.

525. 3 Camp. 516.

It must be a a waiver.

Where the lessee exercises a trade on the demised premises by which his lease is forfeited, the landlord does not by merely lying by and witto constitute a waiver.

Allen, 3 Taunt. 78. It seems some positive act of waiver, as receipt of rent is necessary. But if he permits lessee to expend money in improvements, it would then be evidence to be left of his consent to the alteration of the premises.—Id.

shall issue against him or his effects, whereupon the said premises, or any part thereof, shall be taken, or attempted to be taken, in execution; or Or on nonif the said A. B., his executors, administrators, or of covenants assigns, shall not at all times, during the continuance of this demise, well and truly observe, perform, fulfil, and keep, all and singular the covenants, conditions, and agreements, which on his and their part are or ought to be performed, fulfilled, and kept, according to the true intent and meaning of these presents, then and in every, or any such case, and at all times hereafter, and although no advantage shall have been taken of any previous default, it shall and may be lawful to and for the said C.D., and his heirs or assigns, into the said premises hereinbefore demised, or into any part thereof, in the name of the whole, wholly to re-enter, and the same to have again, re-possess, and enjoy, as in his or their former estate, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

(2.)

Proviso for determining the Lease at the Option of Lessee, at the End of seven or fourteen Years.(q)

PROVIDED ALWAYS, and it is hereby agreed and To deterdeclared, by and between the said parties to these at a certain presents, that if the said A. B., his executors, admi-period. nistrators, or assigns, should be desirous to quit or give up the said hereby demised premises, at the end of the first seven or fourteen years of the said term of twenty-one years hereby granted, and of such his or their desire, shall give six calendar months' notice in writing to the said C. D., his executors, administrators, or assigns, next preceding

⁽g) Where the option is not specified in the lease by which of the parties the lease shall be determined by on non-payment of rent, it will be at the option of the lessor.—Reid v. Parsons, 2 Chit. 247; and see Doe d. Green v. Baker, 2 Meore, 189. 8 Taunt. 241.

the expiration of the said first seven or fourteen years, (as the case may be,) then and in such case (all arrears of rent being duly paid, and the said messuage or tenement, and all other the premises hereby demised, being in such repair as hereinbefore is required) this present lease, and every clause, matter, and thing, herein contained, shall, at the expiration of the first seven or fourteen years of the said term hereby granted, (as the case may be,) determine, cease, and be utterly void, to all intents and purposes, as if the same had expired by effluxion of time, anything hereinbefore contained to the contrary thereof in anywise notwith-standing.

(3.)

Proviso between Landlord and Tenant in Case of Premises being burnt down, as to the Determination of Lease, also as to Insurance.

Cesser of term.
In case of destruction of premises by fire at the option of landlord.

PROVIDED ALWAYS, nevertheless, and it is hereby agreed, by and between the said parties to these presents, that if the said demised messuage, or tenement and premises, or any part thereof, or any messuage, or tenement and erections, built, or to be built, on the said demised piece or parcel of ground and premises, or any part thereof, shall at any time or times during the said term hereby granted be burnt down, demolished, or damnified, by or by means of fire, then and in that case the said A. B., his executors, administrators, or assigns, shall have the option, at any time within fourteen days after such fire, of giving notice that the term hereby granted shall cease and determine on the next rent day after such fire; and in that case, and from that time, provided an insurance shall have been made and kept on foot, pursuant to the covenant hereinbefore contained, and provided all arrears of rent shall be paid up to that day, the said term shall cease and determine; and the said A. B., his executors, administrators, or assigns, shall be discharged of and from any further payment of the rent hereby reserved, or performance of the covenants, conditions, and agreements, hereinbefore contained; and in that case also, the money which shall become payable by virtue of any such insurance, and the remaining materials of the buildings, shall become and be the absolute property of the said company, their successors or assigns, or the said A. B., his executors, administrators, or assigns, shall have the liberty of continuing the tenant or tenants under the term hereby granted; and in that case, if he or they shall re-instate the buildings so damaged or destroyed by fire, to the satisfaction of the surveyor for the time being of the said company, their successors or assigns, and within after such fire, then and in that case, the remaining materials of the buildings shall become the property of the said A. B., his executors, administrators, or assigns; and as soon as the loss or damage by fire shall be reinstated, the sum to be received on or for such insurance shall be paid to him or them.

(4.)

Proviso that Lessees shall be all answerable to the Lessor for the Rent; but as between themselves shall pay the same in certain Proportions.

PROVIDED ALWAYS, and it is hereby agreed and Proviso by declared between, &c., that, as between the said answerable A. B., his executors, administrators, and assigns, for rent. and the said C. D., and E. F., &c., their several executors, administrators, and assigns, the whole of the said yearly rent or sum of £ —— shall be payable by, and recoverable from, all or any of them, the said C. D., E. F., &c., or their several executors, administrators, or assigns; but, as between them, the said C. D., E. F., &c., and their several executors, administrators, and assigns, the same yearly rent or sum shall be payable by them respect-

ively in equal shares and proportions; and if any of them shall be compelled to pay more than his or their joint and equal shares and proportions thereof, or shall be put unto any costs or expenses on account of any non-payment thereof, he or they shall be re-paid and re-imbursed the same, by the party or parties by or through whose default it shall have happened.

(5.)

Proviso for Trustees, having the legal Estate, to lease with Consent for twenty-one Years, at improved Rents.

Power for trustees to lease.

PROVIDED ALWAYS, and notwithstanding all or any of the trusts hereinbefore expressed and declared, it shall and may be lawful to and for the said trustee for the time being, with the consent and approbation in writing of the person or persons who, for the time being, shall, under the trusts hereinbefore contained, be entitled to the rents and income of all or any of the said freehold messuage, &c., if such person or persons shall be of full age; and if such person or persons shall be under the age of twenty-one years, then in the discretion of the same trustees, to make or grant any lease or leases of the said messuages, &c., or any of them, for any term or number of years, determinable before or at the end of twenty-one years, from the time of making or granting the same lease or leases, so as every such lease shall be granted by indenture, and at the best rent which can be obtained, without taking any fine, premium, or foregift, for making or granting the same.

RECITALS.(h)

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And in the said indenture now in recital is con-Recital of tained an agreement on the part of the said, &c., for perpetual for the perpetual renewal of the said term, at the lease. end of —— years of each respective term.

And whereas the said hereinbefore in part recited of renewal indenture of lease of the said premises, hath been tomed times. renewed from time to time at the usual and accustomed times of renewing the same lease.

And whereas the said A. B. hath agreed to be- Recital of come a party to these presents, for the purpose of coming a licensing the assignment hereinafter contained, but party. not further or otherwise.

And whereas by an indenture of lease bearing Recital of a date on or about the, &c., and made, or expressed lease for to be made, between A. B., of the one part, and lives. the said C. D., of the other part, and by livery of seizin duly made and taken in pursuance thereof, in consideration of the surrender of the said hereinbefore mentioned lease, of the —— day of, &c., all and singular the hereditaments and premises comprised in the said hereinbefore in part recited indenture, of the —— day of, &c., were demised and leased unto the said C. D., his heirs and assigns from thenceforth during the natural lives of, &c., and the survivors and survivor of them at and

(A) The recitals in a deed may serve as a key to the construction, where The use of the operative part is doubtfully expressed, and not otherwise.—Bailey v. recitals. Lloyd, 5 Russ. 330. But in general, deeds are construed according to the intent of the parties, to be collected from the recital and provisions of the deed. Lester v. Garland, 1 Mont. 471. For in the construction Construction a deed, regard must be had to all its parts, and general words are to tion of deeds be restrained by a particular recital contained therein; and if a deed by recitals, operate two ways, the one consistent with the intent of the party, and the other repugnant to it, the courts will put such a construction on it, as will give effect to such intent which is to be derived from the whole of the instrument. Solly v. Forbes. 4 Moore, 448, 2 B. & B. 38. And see instrument. Solly v. Forbes, 4 Moore, 448. 2 B. & B. 38. And see Hotham v. East India Company, 1. T. R. 638.

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under the yearly rent of —, and subject to the covenants, conditions, and agreements, in the said indenture now in recital contained, and on the part of the tenant or lessee to be paid, observed, and performed.

(3.) Recital of assignment with consent of lessor.

And by the said indenture now in recital for the considerations, therein and hereinbefore mentioned, and by virtue of the license and consent in writing, of the said E. F., all and singular, &c., were assigned, &c. (See No. 8.)

(6.) Recital of assignment of lease.

Whereas by an indenture bearing date on or about the, &c., and made or expressed to be made between, &c., in consideration of the sum of £----, to the said A. B., paid by the said C. D., all (i) and singular the messuages or tenements, lands and other the premises comprised in and demised by the said hereinbefore in part recited indenture of lease, were assigned unto the said C. D., his executors, administrators, and assigns, for all the residue and remainder then to come and unexpired of the said term of ---- years, subject nevertheless to the payment of the rent, and to the performance of the covenants in the said indenture of lease reserved and contained, and on the part of the tenant or lessee to be paid, performed, and kept.

(7.) Recital of mesne and ultimate of lease.

And whereas by divers mesne assignments and acts in the law, and ultimately by an indenture assignments dated on or about, &c., and made or expressed to be made between, &c., the messuages, lands, and other hereditaments comprised in and demised by the said hereinbefore in part recited indenture of lease, were assigned unto and became vested in the said C. D., for the residue and remainder of the said term of ---- years, therein then to come and

⁽i) If the lease has not been before recited, say, "All, &cc., were araigned, &c., for the residue, &c., created by a certain indenture of lease, dated on or about, &c., and made between, &c.

unexpired, subject to the rent, covenants, conditions and agreements in the said indenture of lease reserved and contained.

And whereas by a deed poll, or instrument in Recital of a writing, under the hand and seal of the said A. B., assign. bearing date on or about the —— day of, &c., the said A. B. did give leave and license to the said C. D., to alien and assign unto any person or persons whomsoever, all and singular the premises comprised in and intended to be demised by the said hereinbefore in part recited indenture of demise, with the appurtenances thereto belonging, subject to the yearly rent and heriots, and to the performance of the covenants, conditions, and agreements, in the said indenture of demise contained.

Whereas by an indenture of lease, bearing date Recital of a &c., and made between A. B., of, &c., of the one lease for a part, and C. D., of, &c., of the other part, for the years. considerations therein mentioned, the said A. B. did demise and lease unto the said C. D. all, &c., to hold the same unto the said C. D., his executors, administrators and assigns for the term of ---years, at and under the yearly rent of £ ----, to be paid by four equal quarterly payments, and with, under, and subject to the several covenants, provisoes, conditions, and agreements, in the same indenture contained, and on the part of the said lessee to be observed, performed and kept.

Whereas the said A. B. hath contracted and Recital of agreed with the said C. D. for a lease of the said contract for lease when messuage, lands and premises, hereinafter par- the mort-ticularly mentioned and described, for the term of gages joins. —years from the day of the date of these presents, at the yearly rent of £ ----, payable as hereinafter is mentioned, and subject to the several covenants, provisoes, conditions, and agreements, hereinafter

contained, and whereas the said (mortgagee) hath consented to join in these presents in manner hereinafter mentioned.

- Whereas the said A. B. hath contracted and agreed with the said C. D. for a lease, &c., AND whereas the license and consent in writing of the lord of the manor of L., whereof the said messuage and premises are holden, hath been obtained for demising the said messuage and premises, according to the custom of the said manor.
- And whereas the said A. B. is possessed of or entitled to the messuage or dwelling-house hereinafter particularly mentioned, and intended to be hereby assigned with the appurtenances, for the remainder of a term of —— years, commencing on the —— day of, &c., at the yearly rent, and subject to the covenants and agreements therein contained, and on the part of the lessee or tenant to be paid, observed, and performed.
- And whereas the said A. B. is possessed of or entitled to the said piece or parcel of land, comprised in and demised by the said indenture of lease, dated, &c., with the appurtenances for all the residue of the said term of —— years.

RECOGNIZANCE OF BAIL IN EJECTMENT. (See 1 Geo. IV., c. 87.) (j)

In the K. B. [C. P. or Exch.]

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Term in the —— year of the reign of Queen Victoria.

Shire (k) to wit. Action of tresspass and ejectment Recognibetween John Doe, on the demise of A. zance in ejectment. B., plaintiff, and J. B., defendant, for the recovery of [set forth the parcels from the declaration], with the appurtenances situate, &c., in the county of, &c.

Recognizance entered into by the said J. B. and two sureties, in pursuance of the statute of the first year of the reign of his late majesty King Geo. the Fourth, chapter eighty-seven.

> The sureties are R. S., of, &c., in the county of, &c., farmer, and T. U., of, &c., in the county of, &c., grazier.

The said J. B. and each of the said sureties in \mathcal{L} —, by rule of court. (1)

L. M., defendant's attorney, O. P., agent.

Taken and acknowledged (m) conditionally by the said J. B., R. S. and T. U., at, &c., in the county of, &c., the -day of —, one thousand eight hundred and thirty-nine, before me,

Y. Z.

A commissioner for taking special bail in the said court.

(j) See p. 23.

Direction.

(k) The county where the premises are situate.

(l) If in the exchequer, the defendant and the sureties must sign their names.

(m) The form of the acknowledgment to be assented to by the de-Form of acfendant and the sureties are as follows: "You do jointly and severally knowledge-undertake that if J. B., shall be condemned in this action, you, J. B. ment. shall pay the costs and damages, which shall be recovered by the plaintiff, or in default of your so doing, that you R. S. and T. U., will pay the costs and damages for him." "Are you content?" to which the three must answer, "We are."

REDDENDUMS.

(1.)

In a Lease for Years of Rent payable quarterly, without any Deductions or Abatement for Taxes, &c.

Of rent payable quarterly.

YIELDING and paying therefore, yearly and every year, during the said term hereby granted unto the said A. B. and C. D., their executors, administrators, or assigns, the clear rent or sum of £ ----, of lawful money of Great Britain, without making any deduction or abatement whatsoever, for or in respect of any present or future parliamentary or parochial taxes, rates, assessments or payments whatsoever, by equal quarterly payments on the 25th day of March, the 24th day of June, the 29th day of September and the 25th of December in every year; the first payment thereof to become due and be made on the, &c., next ensuing the date of these presents.

(2.)

Reddendum in a Lease under a Power. (n)

Yielding and paying therefore, yearly and every Lease under a power. year, during the said term hereby granted unto the

Of making powers.

(n) Where a lease is made under a leasing power, it must clearly appear leases under by the instrument, that the proper rent has been reserved.—Ker c. Roxburgh, (Duke,) 2 Dowl. 149. Although generally a lease made under the directions of a power must specify the rent reserved; yet in some cases the reservation may be made in the terms of the power generally, thus if a power to lease provide that two parts in three of the improved value be reserved as a rent, the reservation may be made in the terms of the power, and the constant payment of such a sum as amounted to that at the time of making the lease, will be good, whether the tenements which are the subject of it rise or fall in value. Powell on Powers, 555. The sum intended to be reserved should be specifically stated in the lease; for otherwise the remainder man may be put to infinite trouble and expense; and the reservation cannot be made by simply transcribing into the lesses the clause in the instrument, creating the power to lease respecting the

reservation:—Orby v. Mohun, 3 Bro. Par. Cases, 248. S. C. Gilb. Eq. Rep. 45. 2 Vern. 531, 542. But a power to make leases is to be liberally construed. Right d. Basset v. Thomas, 3 Burr. 1441. 1 W. Black,

The lease of a tenant for life, with power of leasing under certain Lease of teconditions, must be in strict conformity to these conditions; and if it nant for life vary from them in the interest demised, or the rent reserved, it cannot be with powers. supported against the remainder man.—Cavan (Countess of) v. Doe d. Pultney (in error), 6 Bro. P. C. 175. 5 T. R. 567. If a tenant for life with power to grant leases in possession for twenty-one years at the best rent, mortgage his life estate to trustees to pay an annuity for his life, and the surplus to himself, the power is not thereby extinguished, but he may still rant a lease agreeable to the terms thereof. Roe d. Hall v. Buckley, l Doug. 292,

Where a power of leasing was given to the father, tenant for life, and Father, te-after his decease to the son, tenant for life, and the son obtained a grant nant for life. from the father of his life estate (without noticing the power) subject to a certain rent, with a power of re-entry for non-payment, &c.; it was held that the son during the lifetime of his father could not lease under the

power.—Coxe v. Day, 13 East. 118.

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A lease to commence from the day of the date is a lease in reversion, In reverand, therefore, not an execution of a power to grant leases in possession. sion.

Doe d. Bayutum v. Watton, Cowp. 189.

Under a power to lease in possession and not in reversion, a lease for years executed on the 29th March, to the then tenant in possession, habendum as to the arable from the 13th of February preceeding, and as to the pasture from the 5th of April then next, &c., under a yearly rent payable quarterly on the 10th July, 10th October, 10th January, and 10th of April, is void for the whole, though such lease were according to the custom of the country, and the same had been before granted by the person creating the power.—Doe d. Allen v. Callvert, 2 East. 376.

Under a power to demise for twenty-one years in possession, and not in To lease in reversion, a lease dated in fact on the 17th of February, 1802; habendum possession. from the 25th of March next ensuing the date thereof, is good if not excouted and delivered till after the 25th of March, for it then takes effect as a lease in possession with reference back to the date actually expressed.

-Doe d. Cox v. Day, 10 East. 427.

One under a power to lease for twenty-one years in possession, but not Lease by fain reversion, granted a lease to his only daughter for twenty-one years, ther under a to commence from the day of the date; this was held to be a good lease, power to a —Pugh v. Leeds (Duke), Cowp. 714. (The word "from" may mean either daughter. inclusive or exclusive, according to the contest and subject matter; and the court will construe it so as to effectuate the deeds of parties, and not to destroy them.)

Where powers were given under a settlement to make leases of present Powers but not of future interest, and so as the same went with and were inci- under dent to the remainder and reversion, a lease with a reservation in execu- settlement. tion of these powers to the tenant in possession of the freehold, his heirs, and assigns, was held good, because "his beirs and assigns" meant those to whom the remainder and reversion would go under the settlement.-

Hotley v. Scott, Lofft. 316.

When there is a power to grant leases in possession, but not by way of A lease per reversion or interest, a lease per verba de præsenti is not contrary to the verba de power, although the estate at the time of granting the lease was held by præsentitenants at will or from year to year, if at the time they received directions from the grantor of the lease to pay their rent to the lessee.—Goodtitle d. Clarges v. Funucan, 2 Doug. 565. Semble, that a lease under a power to lease in possession dated in March, to be held from Michaelmas, but not delivered till Michaelmas, is good.—Doe v. Roberts, 4 Dong. 306.

Under a power to trustees "to lease premises for a term not exceeding Lease by

twenty-one years, and determinable as a former term of ninety-nine trustees unyears was determinable, as they should think proper," it was held that der a power, such a power authorised only a lease in possession and not in future; and as the trustees had let the premises for ten years determinable as in the original lease, and afterwards re-let them for the term of eleven years,

said A. B., or the person or persons who for the time being shall be entitled to the said hereditaments and premises in reversion or remainder, the rent or sum of £ ----, of lawful money of Great Britain, by four even and equal quarterly payments in each year, to be made, &c., at the end of each quarter day, computing the quarter from the execution of these presents, free and clear of and from all taxes, charges, rates, assessments and impositions whatsoever, parliamentary, parochial or otherwise, now or at any time hereafter during the said term hereby granted, to be taxed, charged, assessed or imposed upon, for, or in respect of, the said hereby demised premises, or any part thereof, or for, or in respect of the said yearly rent of £ ----, or any part thereof, or for, or on account, or in respect of any matter, cause, or thing, whatsoever; the first payment of the said yearly rent or sum of £ ----, to become due or to be made at the end of the first quarter next ensuing the execution of these presents.

before the expiration of the ten years' lease; that the second lease w void and a bad execution of the power.—Shaw v. Summers, 3 Moore 196.

Land usu. As before observed, leasing powers are to be liberally construed, and ally demised therefore land settled for years, determinable on lives by a family settlement, shall be said to have been thereby usually demised.—Right d. Basset v. Thomas, W. Black. 446. 3 Burr. 144.

may be let.

What lands be reserved as much tent as is now paid for the same; such part of the estate enumerated in the power as may have never been demised may be let.—Goodtitle d. Clarges v. Funncan, 2 Doug. 565.

Rent generally to be reserved.

Under the settlement of an estate with a power to the tenant in persession, to let all or any part of the premises, so as the usual reats be reserved. A lease of tithes which had never been let before was held void. Pomery v. Partington, S. T. R. 665.

Best rent.

In a lease of lands for which the lessor is bound to reserve the best rent which can be got, he must reserve the best rent which can be got at the time the lease is made, without any regard to a former lease in which the rent might have been fairly reserved, on account of money to be expended in improvements.—Doe d. Griffths v. Lloyd, 3 Esp. 78.

Ancient rent

Under a power to demise certain lands, reserving the ancient rent, a demise made of those lauds jointly with others at an entire rent is void.—Doe d. Williams v. Matthews, 2 Nev. & M. 264.

Reservation.

Whether the best rent has been reserved upon a demise made under a leasing power, is a question for a jury, and evidence is admissable to show that the best rent has, in fact, been reserved, although the leasing power also requires that no premium be taken, and the lease which is stated to be in consideration of the rent and covenants, contains a covenant by the lessee, to maintain three adult children of the lessor, the donee of the power, for a small annual sum, and another adult child for nothing.—Doe d. Rogers v. Rogers, 2 Nev. & M. 550. (3.)

Reddendum of an additional Rent for every Acre dug up for Bricks, &c.

And also yielding and paying therefore, yearly Rent for and every year, during the term hereby granted, digging earth for unto the said A. B., his executors, adminis- bricks or trators or assigns, the sum of £ ----, for every potter's clay. acre of the said demised land or ground, which he, the said C. D., his executors, administrators, or assigns, shall, during the said term, dig or break up, or cause, or procure to be dug or broken up for sand, gravel, clay, loam, brick earth or potter's earth, or clay or tile clay, or permit or suffer bricks, pots, or tiles, to be made thereon, or any part thereof, and so in proportion for a greater or less quantity than an acre, by even and equal portions, on the days and times hereinbefore limited and appointed for payment of the hereinbefore reserved rent, the first payment thereof to begin and be made on such of the said days, as shall first happen after the digging or breaking up of the said land, or any part thereof, for sand, gravel, clay, loam, brick earth, potter's earth, clay or tile clay, or permitting or or permitsuffering bricks, pots, or tile, to be made thereon, or to be made, on any part thereof, save and except so much of the &c. said land as may from time to time, during the said term, be dug or broken for the purpose of making wells or sewers for any messuage or tenement which may be erected thereon, or for making foundations to any erections or buildings which may be erected or built thereon, or on any part thereof.

(4.)

A second Reddendum in a Lease of a House, reserving a Rent for Trades carried on.

AND in case the said A. B., his executors, ad- Further rent ministrators, or assigns, or any of them, shall at for carrying any time or times during the said term hereby trades. granted, use or follow, exercise or carry on, or to p. 702.) cause, permit or suffer to be used or carried on,

800 pp. 451, 494,543,699,

in or upon the premises hereby demised, or any part thereof, the trade or business of a soap-maker or soap-boiler, tobacco pipe maker or burner, waxchandler or tallow-chandler, goldbeater, brazier, pewterer, ironmonger, smith, blacksmith, farrier, tanner, fellmonger, currier, leather-dresser or cutter, shoemaker, dyer, scourer, weaver, fishmonger, butcher, tripe boiler or seller, baker, victualler, sugar-baker, or chymist, or use, or permit, or suffer the said premises, or any part thereof, to be used as or for a slaughter-house, a house for melting of tallow, common brewhouse or distillery. chandler's shop, glass house, or for a laystall, or for making or burning bricks, tiles, lime, or bones, or for making any auction or sale therein, or for any other act, trade, or business, whatsoever, without the license or consent in writing for such purpose, first had and obtained under the hands and seals of the said C. D. and E. F., their executors, Reddendum administrators, or assigns, TREN likewise yielding and paying during such time as the said demised premises, or any part thereof, shall be so inhabited, used, or occupied, over and above the said yearly rent hereinbefore reserved unto the said C. D. and E. F., their executors, administrators and assigns, the further yearly rent or sum of £ ----, of like lawful money of Great Britain, to be paid and payable tax free and quarterly, by equal portions, on the same quarterly days and times in every year as are hereinbefore mentioned for payment of the yearly rent hereinbefore reserved, the first quarterly payment thereof to become due and be made on such of the before mentioned quarterly days as shall next happen, after all or any part of the said demised premises shall be so inhabited, used, or occupied, as aforesaid.

part.

(5.)

Reddendum in a Lease for Years, determinable on the Death of a Person.

Reservation And in case the said A. B. shall die on any other of a propos.

yielding and paying unto, &c., a proportionable of rent from part of the said rent, for such time as shall elapse day after between the day of the decease of the said A. B., lessor's death. and such of the said days of payment as shall happen next before his decease, the first payment of the said yearly rent to become due and be made on the, &c., now next ensuing the date of these presents, and the proportionable part of the said rent, which shall become due on the decease of the said A. B., to be due and be made immediately upon or after his decease, and demand made thereof.

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(6.)

Reddendum of monthly Account of Coals landed on Premises, and rendering one eighth of same, or one eighth part of Moneys to be produced thereby.

YIELDING and rendering therefore monthly, and Monthly acevery month, on the first Thursday, if required, in count of coals landed. every month, during the continuance of this demise, unto the said A. B., his heirs, executors, administrators, or assigns, [and also to the proprietors of the other undivided moiety of the said lands and premises, if demanded,] a true and perfect account in writing of all the coals dug and landed by virtue of these presents. And Also yielding and And renderrendering monthly, and every month, or when de-ing one eighth part manded, during the continuance of this demise, to of coals the said A. B., his heirs, executors, administrators, landed, or assigns one full sinkth name of the said A. B., his heirs, executors, administrators, one eighth or assigns, one full eighth part of the moiety of of money the coals to be landed on the said premises, the the sale. whole into eight equal parts to be divided, free worked, dug up, wrought, or landed; on, in lieu thereof, one full eighth part of all the moneys which shall be received by sale of the same coal, the whole into eight equal parts to be divided, at the choice and election of the said A. B., his heirs, executors, administrators, and assigns.

OBSERVATIONS AND CASES.

As to the dause of reddendum.

THE reddendum is the clause in a lease whereby the rent is reserved to the lessor; and anciently corn, flesh, fish, and other victuals, were and still may be reserved on leases, as well as money.(0)

The usual words.

The reddendum is usually made by the words, "yielding and paying," or similar expressions.(p)

Modes of valuing rents of farme.

(e) 2 Rep. 72. Wood's Inst. 226; and see the head "Apportionment," p. 136. The following plan has been recommended of valuing or more properly ascertaining the rent which farming land will bear, and the case considered to be the more correct is, to select one acre of the best arable land in the farm, to value the gross produce as well as the labour, and expense attendant upon it, through the whole of a four years' course of husbandry, consisting of turnips, barley, clover, and wheat, on fine rich lands; and fallow, wheat, clover or beans, and wheat or oats for strong clayey soils; and after taking an average of the profit to deduct therefrom ten per cent. for the farmer's stock and capital, the remainder being farm, the rent of the intermediate qualities of soil will then be readily ascertained; the whole being afterwards added together, an average taken of the whole farm will give the rent per acre.

Other modes have been adopted, such as calculating the gross value of the produce, and dividing it into three equal parts; to set aside one part for the expense of tillage, workmen's bills, wages, and other incidental expenses; another for the maintenance of the tenant and his family; and to consider the third, after deducting taxes, tithes, and assessments, as the proper rent to be paid. Another mode is to deduct all the expenses and outgoings, together with the maintenance of the farmer and his family from the gross produce; to allow ten per cent, upon the capital compleyed, and to consider the remainder as the fair rent.

AVERAGE VALUE OF RENTS FOR ARABLE LAND.

Value of the rents of turnip and clay land accord ing to the selling prices of wheet.

Price of wheat per bushel.	Bent for turnip land.	Eent for olay land.
2. s. d. 0 5 0 0 6 0 0 7 0 0 8 0 0 9 0 0 10 0 0 11 0 0 12 0	\$. \$. \$. \$. \$. 1 \$ 0 \$ 1 10 0 \$ 1 15 0 \$ 2 \$ 0 0 \$ 2 \$ 5 0 \$ 2 10 0 \$ 2 15 0 \$ 3 0 0 \$ 0	2. s. d. 0 12 6 0 15 0 0 17 6 1 0 0 1 2 6 1 5 0 1 7 6 1 10 0

Localities.

The above scale is intended as for fine turnip land and strong clay land. A farmer previous to renting a farm should take into consideration the qualities of the soil, and all circumstances of a local nature respecting

(p) See pp. 483-487, and note (s) to p. 589.

In every good reservation these things must Requisites. always concur:

1. It must be by certain and apt words.(q)

Words.

2. It must be of some other thing issuing or com- what must ing out of the thing granted, and not a part of the be issuing. thing itself, nor of something issuing out of another

3. It must be of such a thing whereunto the Resort for grantor may have resort to distrain.

4. It must be made to one of the grantors, and To whom not to a stranger to the deed.

Rent may be reserved to commence before the commencelessee is to enter.(r)

There is a difference between a rent entire upon Difference a demise of several things in the same lease, and between an entire rent where the rent is not at first reserved entire, but and when where the reservation is several, and apportioned to several the several things demised; for instance, if a lease things. be made of several houses, rendering the annual rent of £5. at the two usual feasts,—videlicet, for one house £3., for another 10s., and for the rest of the houses the residue of the said rent of £5., with a clause of re-entry into all the houses for non-payment of any parcel of the rent; this is but one reservation of one entire rent, because all the houses were leased, and the £5. was reserved as one entire rent for them all; and videlicet afterwards does not alter the nature of the reservation, but only declares the value of each house.(s)

Tate, Cowp. 781.

(s) Gilbert on Rents. But if the lease had been of three houses, render- As to reing for one house £3., for another 20s., and for the third 20s., with a con-servations dition to re-enter into all for the non-payment of any parcel; these are severally. three several reservations, and in the nature of three distinct demises; and each house in this case is only chargeable with its own rent; the entire sum being not at first reserved out of all the houses demised, and

⁽q) Thus, a lease for years reserving rent "after the rate" of £18. per When re-year, is void for uncertainty.—Parker v. Harris, 1 Salk. 262. 8. C. 4 servation Mod. 76. It not appearing what rent he should pay in certain, or at what void for an time.—Id. Though it has been laid down that if there be anything in uncertainty. the reservation by which the amount of the rent may be ascertained, this will be as good as if the sum itself were clearly specified upon the maxim that id certum est quod certum reddi potest.—Orby v. Mohun, 2 Vern. 531, 542. 8. C. 2 Freein. 291. (But a special covenant on the part of the lessee to pay to the lessor the rent, should be always inserted in the lease.)

(r) See Gilb. on Rents, 25. A subsequent agreement may by relation By relation. operate to make a reservation of rent from the beginning.—M'Leish v. Tate, Cowp. 781.

Rent in ad-Vance.

When rent is reserved to be paid in advance, and when that is intended to be the case, it should be clearly expressed whether the payment in advance is intended to be of the current quarter for the time being during the whole term, or for the first payment only. (t)

Absence of **express** agreement to pay rent.

If, by a written agreement, A. agrees to let, and B. to take, a messuage from a day past for a term of ten years, "at and under the rent of £80.," this is an agreement by B. to pay a rent of £80.; and, therefore, if there be a power of re-entry in case of a breach of "any of the agreements therein contained," A. has a power of re-entry for non-payment of rent, and may bring ejectment, although there is no express agreement to pay the rent.(u)

Parol evidence as to rent

Parol evidence is not admissible to prove an additional rent beyond that expressed in the written agreement for a lease. (v)

As to pay-ment of rent (Joint tenants.)

One of several joint tenants may demand and receive the whole rent due, and give a discharge for it, and such discharge is good and binding on his companions.(n)

Tenants in common.

Upon a lease by tenants in common the survivor may sue for the whole rent, although the reservation be to the lessors according to their respective interests.(x)

Payment by mistake.

A payment of rent by mistake or misrepresentation to a person not entitled to demand it, does not preclude the tenant from showing that the person to whom it was paid was not entitled to it.(y)

When demise void. afterwards apportioned to the several houses according to their respective value, as in the former case; but the particular sums were at first received out of the several houses; and, therefore, the non-payment of rent of one house sould be no cause of entry into another. (Where there is a demise of premises, and an entire rent reserved, if any part of the premises could not be legally demised, the whole demise is void.—Doe d. Griffith v. Lloyd, 3 Esp. 78.) And see Tanfield v. Rogers, Cro. Eliz. 341. Gilb. on Rents.

(t) Holland v. Palser, 2 Stark. 161.
(u) Doe d. Rains v. Kneller, 4 C. & P. 3.
(v) Preston v. Merceau, 2 W. Black. 1949. But an additional rent may be reserved for changing the character of particular premises.—Rolfe r. Paterson. 2 Bro. Part. Cas. 436. (See Reservation, p. 697, No. 4.)
(w) Robinson v. Hoffman, 1 M. & P. 474. 4 Bing. 562. 3 C. & P. 234.
(x) Wallace v. M'Laren, 1 M. & R. 516.
(y) Rogers v. Pitcher, 1 Marsh, 541. 6 Taunt. 202.

RELEASES.

(1.)

í.

Release by a Landlord to a Tenant of Rent.

THIS INDENTURE, made the —— day of, &c., BE- Parties. TWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part; WHEREAS, &c., (recite the lease Recital. on which the rent is reserved). AND WHEREAS, the said A. B. hath agreed to release and discharge the said C. D. from the said yearly rent or annual sum of, &c., in consideration of, &c. Now this inden- Testatum: TURE WITNESSETH, that in pursuance of the said agreement, and for and in consideration of the sum of £---, of lawful money of Great Britain, to the said A. B., in hand, well and truly paid by the said C. D., at or before the execution of these presents, the receipt whereof, and that the same is in full for the absolute purchase and extinguishment of the said yearly rent or annual sum, the said A. B. doth hereby acknowledge, &c.; he, the said A.B., DOTH by Operative these presents freely and absolutely remise, release, part. and for ever quit claim unto the said C. D., his executors, administrators, and assigns, ALL that the Rent said yearly rent or annual sum of £ ----, so reserved to him the said A. B., under or by virtue of the said hereinbefore in part recited indenture of lease, of the —— day of, &c., and all arrears thereof, and all powers and remedies for the recovery thereof; AND all the estate and interest of him, the Estate, &c. said A. B., in and to the same, TO THE INTENT that the same rent or annual sum may be forthwith extinguished.(z) (Add a covenant that A. B. hath not encumbered.)(a) In witness, &c.

⁽z) Here may be added, "And that the said C. D. may hold, possess, For lessee to and enjoy, the said messuage, &c., for the residue and remainder which is hold, &c. now to come and unexpired of the said term, (heretofore charged with or made liable to and with the same,) wholly and absolutely freed and discharged therefrom, and of and from all claims and demands in respect thereof, or any part thereof."

(a) This covenant may run thus: "And the said A. B. doth hereby for Covenant

(2.)

A Release by a Landlord of a Right of Entry, or for Breach of Covenant, or Condition broken, (by Indorsement).

Deed poll. Recital. Operative pert.

To all to whom these presents shall come. the within-named A. B. sends greeting; WHEREAS, &c., (recite the preliminary matter). Now exow YE that the said A. B. doth hereby waive, surrender up, and release, unto the said (tenant), his executors. administrators, and assigns, all and every right and title of re-entry of or by him the said (landlord), his heirs and assigns, into or upon(b) the messuages, lands, and hereditaments, in or by the within written indenture described, or their appurtenances, or into or upon any part thereof, under or by virtue of the within written indenture, or any power or proviso, condition, or agreement, therein contained, or otherwise howsoever; and he, the said A. B., doth hereby bar and estop himself, his heirs, executors, administrators, and assigns, thenceforth and for ever, from exercising or claiming the said right or title of entry in any manner howsoever. (c) In witness, &c. (d)

himself, his heirs, executors, and administrators, covenant and decisre hath not encumbered.

with and to the said C. D., his heirs, executors, administrators, and assigns, that he, the said A. B., hath not at any time heretofore assignsd, transferred, or made over, the said yearly rent or annual sum of, &c., or any part thereof, unto any person or persons whomsoever, nor made, done, committed, or executed, or knowingly suffered, any act, dead, matter, or thing, whatsoever, whereby, or by reason or means whereof, he is become, or can or may be rendered incapable of, or prevented from, releasing and extinguishing the same in manner aforesaid, and according to the true intent and meaning of these presents."

(b) Or, "Into or upon all, &co., being part and parcel of," &cc. (as the case

When part.

may be)

Proviso when release is intended only as to part.

(c) If the release be meant to extend to a part only of it add, " Provided always nevertheless, and it is hereby expressly declared and agreed, that these presents, or the surrender or release hereby made or given, shall not by implication or otherwise operate or affect, or be deemed or construed to operate or affect, a surrender, release, or renunciation, of any right or title of entry into or upon any other of the premises within described, but only into or upon such and such part of the messuages, lands, and hereditaments, within described, with the appurtanances, as herein are parti-cularly mentioned."

When part

(d) It seems that where premises contracted to be sold are held with
of premises other property at one entire rent, or subject to covenants, with a provise
are contractfor re-entry on the non-payment of the one, or non-performance of the
other, wpon any part of the land, the title is unmarketable, unless the reversioner release his right of entry.—See Fildes v. Hooker, 3 Madd. 193;
and Warren v. Richardson, 1 You. 1. (But it then becomes necessary to
innestinate the releaser's title.) investigate the releasor's title.)

(3.)

Release between Landlord and Tenant from the Performance of an Agreement for a Lease, with Stipulations as to the same.

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THIS INDENTURE, made, &c., BRTWEEN, (land- Parties. lord), of, &c., of the one part, and (tenant), of, &c., of the other part; WHERRAS, by a certain memoran- Recital of dum of agreement bearing date, &c., and made between the said A. B. and C. D., he, the said (landlord), did amongst other things therein contained, agree with the said (tenant) that he would, within the space of one year from the date thereof, sign, execute, and deliver, unto the said (tenant), his executors, administrators, and assigns, a lease for the term of twenty-one years, to commence from the - day of, &c., then next, of ALL, &c., being the Promises. lands and premises in the memorandum or agreement particularly mentioned, and set forth as the same were then at the time of making the said memorandum or agreement, in the occupation of, &c.; and in which memorandum or agreement it is also agreed that the said (landlord) should pull down the farm house, and erect and build a new house in the stead thereof, according to the dimensions therein specified; and as soon as the same should become habitable, the small house should be also taken down by the owners of the said farm, and the rent was thereby agreed to be the sum of £ — a year, payable yearly, on, &c. WHEREAS, since the execution of the said agree- pulling down of ment, the said farm house hath been pulled down, farm house, and the several alterations, amendments, and re-tions made. pairs, have been also made to the said premises in such manner as in the said agreement are mentioned, at the expense of the said (landlord). And Recital of WHEREAS, the said (tenant) immediately from and nant. after the execution of the said memorandum or agreement, did enter into and upon the said premises as tenant, and was thereof possessed, but no lease was ever executed by the said (landlord) ac-

AND Recital of and altera-

Recital of rent due.

cording to the purport of the said agreement. And WHEREAS, there will be due from the said (tenant) the sum of \mathcal{L} —— for one year's rent for the occupation of the said premises, on the —— day of now next ensuing, all rent having been paid by the said (tenant) up to the --- day of --- now last

Recital of farm.

And of te-

Testatum.

Bond for payment.

Release of actions by landlord to tenant

past. And whereas, the said (tenant) being intenant being capable of supporting the necessary charges, and unable to carry on the paying the rent which may be incurred by his continuing tenant for the said premises, hath applied to the said (landlord), and requested him to acquit and discharge him from continuing tenant for the said premises, and from the several and respective covenants and conditions contained on his part and behalf in the said recited agreement, and hath offered and agreed to pay to him, the said nant offer- (landlord), the sum of, &c., over and above sum besides the sum of £ ----, being one whole year's rent rent due to be released. which will become due and payable on the ——day of - next ensuing the date of these presents, upon condition that the said (landlord) do release, acquit, and discharge him from the occupation of the said premises, and from the several covenants on his part entered into by the said agreement, to which the said (landlord) hath consented and agreed, NOW THESE PRESENTS WITNESS, that in consideration of the premises, and also for and in consideration of the said sum of —, of, &c., lawful money, over and above the said sum of £ ----, so to become due and payable as aforesaid, and which said sum of \mathcal{L} together with the said sum of £ ----, making together the sum of £ ----, are secured, to be paid to the said (landlord), by one bond or obligation, (e) under the hand and seal of the said (tenant), and bearing even date herewith, and made payable on the said —— day of —— now next ensuing. He the said (landlord) DOTH for himself, his heirs, executors, and administrators, fully, freely, and absolutely remise, release, quit, claim, and discharge the said (tenant), his heirs, executors, and adminis5

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trators, of and from all and every the several and respective covenants, and agreements in the said recited agreement, contained on the part and behalf of the said (tenant), his heirs, executors, and administrators, to be done and performed, and of, and from all, and all manner of action and actions, suit and suits, cause and causes of actions and suits, rents, costs, charges, damages, payments, claims, and demands whatsoever, either at law or in equity, for, concerning, or in respect of, the said recited agreement, or any matter or thing therein con-And the said (tenant) for the consider- Release by ations aforesaid, doth hereby for himself, his heirs, tenant to landlord, of executors, and administrators, fully, freely, and clear- actions, &c. ly remise, release, quit, claim, and discharge the said (landlord), his heirs, executors, and administrators, of and from all and every the covenants and agreements in the said recited agreement contained, by and on his part and behalf to be done and performed, and of and from all manner of action and actions, &c., which he, the said (tenant), his executors, &c., might or could have against him, the said (landlord), his heirs, executors, or administrators, for or in respect of the non-performance of all or any of the recited articles, matters, or things in the said recited agreement, on the part and behalf of the said (landlord), agreed to be observed, performed, fulfilled, and kept, or for any other matter, cause, or thing antecedent to the day of the date of these presents, and the said (tenant) doth hereby for himself, his heirs, &c., absolutely surrender and give up the said recited agreement, under the hand and seal of the said (landlord), all his right, title, interest, property, advantage, claim, and demand therein, and thereto unto him, the said (landlord); AND the said (tenant) doth hereby for Covenant by himself, his executors, administrators, and assigns, tenant not to covenant, promise, and agree, to and with the said compost (landlord), his heirs, executors, and administrators, in manner following, (that is to say,) that the said (tenant), his executors, or administrators, or his or their workmen or agents, shall not, nor will,

cause or suffer to be wasted or carried away from off the said premises, any of the compost, soil, or

Nor suffer any waste to be done.

Tenant to doliver up key and give possession.

tenant for landiord

dung now remaining on the said premises, or any part thereof, but shall and will cause and procure the straw, so soon as thrashed from the wheat now growing on the said premises, to be properly housed in the usual place or places appointed for that purpose on the said premises, and there to be and remain, to and for the sole use, benefit, and disposal of him, the said (landlord), and his heirs, executors, administrators, or assigns, nor shall, nor will, do, cause, permit, or suffer to be done, any manner of waste or damage, to or upon the said premises, or any part thereof, at any time or times hereafter. for, or on any account whatsoever. And also, that he the said (tenant), his executors, administrators and assigns, shall and will, on the said ---- day ofnext, surrender and deliver the keys belonging to the said premises, up into the hands of him the said (landlord), his heirs or assigns, or his or their certain attorney or agent, and give him or them, peaceable and quiet possession of the said premises, and of every part thereof, clear of and from all manner of taxes, charges, and impositions, which now are or shall be then due, in Covenant by respect of the said premises. AND MOREOVER, the said (tenant) doth hereby covenant, promise, and peaceably to agree, to and with the said (landlord), his heirs, and assigns, that for and notwithstanding any act, deed, matter, and thing by him, the said (tenant), heretofore done, committed, or suffered, or hereafter to be done, committed, or suffered by him as aforesaid, he, the said (landlord), his heirs, and assigns, shall and may from time to time, and at all times hereafter, from the said -—day of, &c., now next ensuing, peaceably and quietly have, hold, use, occupy, possess, and enjoy, all and singular the said premises, with the appurtenances, without any let, suit, trouble, hindrance, molestation, interruption, claim, or demand, whatsoever, of or by him the said (tenant), his executors, administrators,

and assigns, or any other person or persons lawfully claiming, or to claim, by, from, or under him, them, or any of them, or by, or through his, their, or any of their acts, means, assent, privity or procurement. In witness, &c.

(4.)

Release from a Landlord to his Lessee, the latter becoming the Purchaser of the Inheritance of the Premises comprised in the Lease.

THIS INDENTURE, made the ---- day of, &c., BE- Parties. TWEEN [landlord, (the vendor)], of, &c., of the one part, and [lessee, (the purchaser)], of, &c., of the other part. WHEREAS the said (lessee) hath con-Recital of tracted and agreed with the said (landlord), for the contract. absolute purchase of the inheritance of the messuage, land, hereditaments, and premises hereinafter released, at or for the price or sum of £500. Now Testatum. THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for effectuating such purchase, and in consideration of the sum of £500, of lawful money of Great Britain, by the said (lessee) to the said (landlord), in hand, paid at the time of the execution of these presents, the receipt whereof is hereby acknowledged. (f) He the said (landlord) operative doth by these presents grant and release unto the part. said (lessee), his heirs, and assigns, all that messuage, &c., situate, &c., and now in the occupation of the said (lessee), (which same messuage, and Reference hereditaments are now in the actual possession of to lease. the said (lessee), by an indenture dated the day of, &c., for the term of fourteen years from the day of the date thereof, and by force(g) of an entry

see p. 481.

⁽f) If the landlord be a married man, and the marriage took place after When venthe first January, 1834, the operative part may be in this form: "They, the dor is marsaid vendor and C., his wife, do by these presents, [to be duly acknow-ried. ledged by the said C., (she hereby consenting,) according to the act passed in the fourth year of the reign of his late majesty King William the fourth, intituled, 'An act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance,' and in pursuance of the powers and provisions given by and contained in the said act,] grant, bargain, sell, and release, unto," &c.

(g) An entry having been made by the lesses under the demise or lease, Entry. will be sufficient for the operation of the release. See note (v) to p. 9, and see p. 481.

made by the said (lessec), pursuant to the same in-

General

words.

Reversion.

Covenants.

recited.

The method of barring dower.

Habendum to uses.

denture), (h) all which said premises were conveved to the said (landlord) by indentures of lease, and release, dated the --- and --- day of, &c., and all other the hereditaments comprised in the same indentures, together with all and singular outhouses, buildings, yards, gardens, orchards, ways, waters, water courses, woods, commons, fences, liberties, privileges, profits, commodities, and advantages whatsoever, to the said hereditaments hereby released belonging or in anywise appertaining, and the remainder, remainders, reversion, and reversions, rents, and profits of and in the said hereditaments, with the appurtenances, and all deeds and writings whatsoever, relating solely to the said hereditaments now in the possession or power of the said (lessor), To Habendum. HAVE AND TO HOLD (i) the said messuage, &c., hereby released with the appurtenances, unto and to THE USE of the said (lessee), his heirs, and assigns, Declaration for ever. And it is hereby declared by the said to bar dower (lessee), that any widow of his, who shall happen to survive him, shall not be entitled to any dower out of or in the said messuage, &c., hereby released, or

(A) If the lease be recited, and it be also stated that the leasee made an When lease entry in pursuance of the demise, the reference to the lease here may be omitted.

any part thereof, (add covenants (j) from the

(i) The method adopted to bar dower in the above form, is prescribed by the dower act of 3 and 4 W. IV., c. 105; but if the releasor has been married before the second of January, 1834, and is desirous of barring the dower of his wife, a trustee must be made a party to the deed, and it will be necessary to adopt the old uses to bar dower, which may be in the following short form: "To have and to hold the said messuage, land, and heresttaments, hereby released, with the appurtenances, unto the said (purchaser), his beirs and assigns, to such uses, intents, and purposes, as he shall by any deed or deeds, instrument or instruments in writing, executed in the presence of one, two, or more witnesses, direct, limit or appoint, and in default of any such direction, limitation or appointment, to the use of the said (purchaser), and his assigns for his life; and after the determination of that estate, by any means in his lifetime, TO THE USE of the said purchaser, and his assigns for his life: and after the determination of that estate, by any means in his lifetime, TO THE USE of the said (trustee), and his heirs during the life of the said (purchaser), in trust for the said (purchaser), and his assigns, and after the determination of that estate, to the use of the said (purchaser), his heirs, and assigns for ever.

(j) The following short forms of the usual covenants may be safely adopted in small purchases. See notes to pp. 286—288.

"And the said vendor doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said (purchaser), his heirs, and assigns, (that notwithstanding any act, deed, matter,

Usual covenants.

Good right to release

landlord, that he has good right to convey; for From peaceable possession; free from encumbrances, vendor. and for further assurance).(k) In witness, &c.

or thing, by him the said (vendor), made, done, or permitted, to the con- and convey. trary,) he, the said(vendor), now hath in himself good right to grant release and convey the said messuage, and hereditaments, with the appurtenances, unto the said (purchaser), his heirs, and assigns, in manner aforesaid, according to the true intent and meaning of these presents; AND ALSO that For peace-it shall and may be lawful for the said purchaser, his heirs, and assigns, able posimmediately after the execution of these presents, to enter into and upon and session. enjoy the said messuage and hereditaments hereby released, with the appurtenances, and to receive and take the rents and profits thereof, for his and their own use and benefit, without any interruption whatsoever, from or by the said (vendor), or his heirs, or any person claiming through or in trust for him; AND that free and clear or otherwise, by him the said (vendor), Free from his heirs, executors, or administrators, well and sufficiently indemnified, encumof, from, and against, all estates, titles, troubles, liens, charges, and encumbrances. brances whatsoever, made, done, or permitted by the said (vendor), or any person claiming through or in trust for him. AND MOREOVER, that he the And for said (vendor), and his heirs, and all persons whosoever claiming through further asor in trust for him, shall and will at the request and charges of the said surance. (purchaser), his heirs, and assigns, make and perfect all further assurances that be necessary for the more effectually, or satisfactorily conveying the said hereditaments hereby released, with the appurtenances, unto the said (purchaser), his heirs and assigns, according to the true intent and meaning of these presents, as by the said purchaser, his heirs or assigns. or his or their counsel in the law, shall be devised or required, IN WIT-NESS, &c. [If the vendor's wife be a party, the covenants must be entered into by the vendor for himself and wife. See covenants, p. 286.]

(k) If a term created out of the premises is to be assigned to attend the in. Assignment herilance, the trustee of the term who is called the termor must be made a of a term in party to the deed, as also the trustee to whom the term is to be assigned, which trust to atassignment is generally made by a second witnessing part after a short retend the incital of the creation of the term thus: "And whereas, the said messuage and heritance. hereditaments are subject to the residue of a certain term of five hundred years, created by an indenture dated, &co., and made between, &c., and which under and by virtue of divers meane assignments and other acts good and available in the law, and ultimately by an indenture dated, &c., and made between, &c., became vested in the said (termor), his executors, administrators, and assigns, in trust for the said (vendor), his heirs and assigns, and to attend the inheritance of the said hereditaments and premises. And whereas, upon the treaty for the said purchase of the said messuage, &c., is was agreed between the said (vendor) and (purchaser), that the said term of five hundred years, and the premises therein comprised, should be assigned for the residue thereof to a trustee, to be nominated by the said (purchaser), in trust for him the said (purchaser), and the said (trustee) hath been nominated by him accordingly. Now this in- Testatum. denture also witnesseth, that in pursuance of the said agreement, and in consideration of five shillings of, &c., paid to (termor) by (trustee for purchaser), he the said (termor), at the request of the (vendor), and at the nomination of the purchaser, testified, &co., doth assign, transfer, and set over, unto the said (trustee for purchaser), all and singular the said, &c., comprised in the said indenture of, &c., and hereinbefore granted and released, with the appurtenances, all the estate, &c. To have and to hold the said, Habendum. &c., hereby assigned, unto the said (trustee), his executors, &c., for and during the residue of the said term, in trust for the said (purchaser), his heirs and assigns, and to attend the inheritance of the said premises. (Add a covenant that termor hath not encumbered similar to the one at Covenant. note (m), p. 712.) In witness, &c.

SURRENDERS.

(1.)

Surrender by a Lessee of the Term in his Leave to the Landlord.(1)

Deed poll.

To all to whom these presents shall come, the within-named C. D. sends greeting. WHEREAS, the said C. D. hath agreed with the said A. B. to surrender and yield up unto the said A. B., the within-mentioned hereditaments, for the residue of the within-mentioned term, in consideration of, &c., to the intent that the same may merge in the freehold and inheritance of the said premises. Now these presents witness, that in pursuance of the said agreement, and in consideration of, &c., the receipt, &c., HE, the said C. D., DOTH by these presents assign and surrender unto the said A. B.,

his heirs and assigns, ALL that the messuage or tenement, &c., and all other the premises in and by the within-mentioned indenture demised, with their appurtenances, and all the estate and interest of him, the said C. D., in and to the same, together

take, and receive, the messuage, &c., and premises, estate, and interest, hereby surrendered, or intended so to be, with their appurtenances, unto him, the said A. B., his heirs and assigns, for all the residue of the said term in the same heredi-

Operative part.

Habendum. with the said recited indenture of lease. To HAVE,

Covenants.

Cancelling.

(1) The mere cancelling a lease is not a surrender within the statute of

nant that A. B. hath done no act to encumber; (m)

taments; to the intent that the same may forthwith merge and become extinguished in the freehold and inheritance thereof. [Add a cove-

Covenant that surrenderor hath not encumbered.

frauds.—(See p. 159, as to this statute.)
(m) The covenant that the surrenderor hath not encumbered, may run shortly thus: "And the said C. D. doth hereby for himself, his heirs, executors, and administrators, covenant and declare with the said A. B., his heirs and assigns, that he, the said C. D., hath not made, done, or committed, any act, deed, matter, or thing, whatsoever, whereby the said term of, &c., or the said hereditaments, may be in any manner encumbered." and that he, the said A. B., will do any further Further act the better to assign or surrender the premises.](n) In witness, &c.

(2.)

Surrender of a Lease for Lives(o) (one of the Lives being dead) in order to obtain a Renewal. (By Indorsement.)

This indenture, made the —— day of, &c., BE- Parties. Tween the within-named C. D., of the one part, and the within-named A. B. of the other part. [RECITE the death of one of the cestui que vies, and Recital. that the said C. D. had requested the said A. B. to grant him a renewed lease for three fresh lives, to be nominated by the said C. D., which the said A. B. had consented to do, and for such purpose had requested the said C. D. to surrender up the said lease as hereinafter mentioned.] Now This Operative INDENTURE WITNESSETH, that in pursuance of the part said agreement, and in consideration of five shillings of lawful money of Great Britain, by the said A. B., in hand, paid by the said C. D., the receipt,

' (n) And the covenant for further assurance thus: " And further, that he, For further the said C. D., his executors or administrators, shall and will at the re-assurance. quest and charges of the said A. B., his heirs or assigns, make and perfect all further assignments or surrenders that may be necessary for the more effectually or satisfactorily assigning or surrendering the said hereditaments, for the residue of the said term, unto the said A. B., his heirs or assigns, according to the true intent and meaning of these presents, as by the said A. B., his heirs or assigns, or his or their counsel in the law, shall be devised and tendered to be executed."

(o) If there be no intervening estate the old term will merge in the new Cases deone, if the new lease be granted to the person who has the legal estate in cided as to the old lease, and this merger is effected by operation of law. (It seems the surthe acceptance of a new good lease implies the surrender of the former.)— render of Davison d. Bromley v. Stanley, 4 Burr. 2210. But the acceptance of a terms of resurrender is not to be presumed from the circumstances of the rent having newable been paid by a third person, and not by the original tenant.—Copeland v. leases. Watts, 1 Stark. 96. Otherwise a surrender must be in writing to bring it within the statute 29th Ch. II. (See p. 159.) A mere recital in a second lease, granted in consideration of such recited surrender, is not within the statute, nor is the cancelling a lease a sufficient surrender of the term, as the statute requires the same to be done by deed or note in writing, and as the statute requires the same to be done by deed or note in writing, and it may be, that if such term should not be merged, it probably may at some future period be set up by a tenant to an ejectment by a remainder man.

—See Roe d. Berkley (Earl) v. York (Archbishop), East, 86. 2 Smith,

166. It appears that a lease being found in the possession of the lessor in a cancelled state is not evidence of a surrender by deed or note in writing.—Doe d. Courtail v. Thomas, 4 M. & R. 218. 9 B. & C. 288.

3 0 3

Premises.

Intent

&c., he, the said C. D., doth hereby surrender and yield up unto the said A. B., his heirs and assigns, ALL, &c., and all the estate, term, and interest, of him, the said C. D., in and to the same; to the intent and purpose that the said A. B. may be enabled to grant to the said C. D., and his heirs, a new lease of the said hereditaments, for and during the lives of such three persons as shall be nominated by the said C. D. In witness, &c.(p)

Title as to renewable leases.

(p) With respect to renewable leases, there appears to be a peculiar difficulty which often proves fatal to the title. Most public bodies, upon renewing an old lease, require it to be given up; and as each successive lease is alleged to be made in consideration of the surrender of the one preceding it, a purchaser is commonly held to have notice of such surrendered leases, even though he cannot by any means obtain possession of them. And if the vendor cannot produce them so as to eatisfy a purchaser that they disclose no trust which in equity would be considered to affect his conscience, the title is deemed to be unmarketable.—See Sag. Vend. and Purch. 1, 339. Prest. Abst. 1, 16; and see Coppin v. Ferny-hough, 2 Bro. C. C. 291. (But it has been doubted by some consequences whether there is any just foundation for the practice which has precalled of treating titles under renewable leases as defective, if a chain of leases back to a remote period cannot be produced.)

Tenant right

of renewal.

Production of surrenders.

Leases are sometimes renewed on the ground of what is called in Scotland "kind-lie," and in England a tenant right; and although this right does not beget any corresponding obligation on the part of the leaser or lord, yet it is considered to give the tenant an ulterior interest beyond his subsisting term. Although such interest amounts to a mere chance, yet it is subjected in all respects to the same provisions as the most permanent property.—See Bac. Abr. iv. 890, 891, title Leases, (w). And see Butler's notes to Co. Litt. 290, b. s. 249, s. ix. Equity has also recognized this right of renewal.—See Finches Rep. 392. I Sch. & Lef. 299, 352. I Ball & B. 409. I Bos. & P. 376.

TESTATUM CLAUSES IN LEASES.

WITNESSETH, that (q) in consideration of the common rent and covenants hereinafter reserved on the part form with of the said (lessee), his executors, administrators, words. and assigns, to be paid and performed, he, the said (lessee), doth by these presents demise and lease(r) unto the said A. B., his executors, administrators, and assigns, ALL, &c.

Witnesseth, that for and in consideration of the In a farmyearly and other rents hereinafter reserved, and of ing lease. the exceptions, covenants, provisoes, conditions, or agreements, hereinafter contained, on the part and behalf of the said C. D., his executors, administrators, and assigns, to be paid, done, observed, performed, fulfilled, and kept, he, the said A. B., doth hereby demise, lease, set, and to farm let, unto the said (lessee), his executors and administrators, ALL, &c.

Now this indenture witnesseth, that for and in Testatum consideration of the yearly rent, &c., hereby re-virtue of an served, and hereinafter expressed and contained, act of parliament on ment on a and by and on the part and behalf of the said (les-bling a persee), his executors, administrators, and assigns, to son to lease. be paid, done, and performed, he, the said (lessor), in virtue and in pursuance of the power and authority in and by the said recited act of parliament given, granted, and reserved, or otherwise vested in him, hath granted, leased, and demised, and by this present indenture by him, the said (lessor), sealed and delivered in the presence of, and

⁽q) If a sum of money is given as a consideration, it may be thus: When a con"That as well in consideration of the sum of \mathcal{L} —, of lawful money of sideration is Great Britain, to the said (lessor), in hand, paid by the said (lessoe), at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, as also in consideration of the rent," &c. (r) Or if two: "Do and each of them doth grant, demise, and to farm Several. let," &c.

Witnesses.

attested by, one, two, or more credible persons, whose names are written or subscribed at the foot of the attestation hereupon endorsed, as witnesses to the sealing and delivery hereof by him, the said (lessor), doth grant, lease, and demise, unto the said (lessee), his executors, &c., ALL, &c.

(4.)Testatum clause by virtue of several acts enabling several persons to demise.

Now this indenture witnesseth, that for and in consideration of the rent hereinafter reserved, and of the covenants and agreements hereinafter contained, on the part and behalf of the said A. B., and E. F., and G. H., their respective executors and administrators, to be paid, done, and performed, they, the said A. B. and C. D., in pursuance and exercise of the power and authority given to or vested in them, in and by the said several recited acts, or any or either of them, and of all other power and powers, authority and authorities, in anywise enabling them in this behalf, do demise, lease, and to farm let, unto, &c.

(5.) In a renewable lease for lives.

Witnesseth, that in consideration of the surrendering up to be cancelled of an indenture of lease heretofore made, of the messuage or tenement hereinafter demised, for three lives all yet in being, and for and in consideration of the rents, &c.,(s) he, &c.

(6.)Another form upon adding a fresh life, and upon prior lease.

Now this indenture witnesseth, that in pursuance of the said recited covenant, and of the said deed poll or surrender, and also in consideration of the and upon surrender of sum of £ ----, of lawful money of Great Britain, to the said (lessor), in hand, &c., he, the said (lessor), doth by these presents grant, demise, and lease, unto the said (lessee), his heirs, executors, administrators, and assigns, (u) ALL, &c.

Lives.

Ib.

(s) When it is a lease for years determinable on lives say: "His execu-

Form under a derivative lease.

tors, administrators, or assigns."

(t) When it is a derivative lease under a building contract: "Now this indenture witnesseth, that for carrying the said recited agreement into effect, and in consideration of the yearly rent, covenants, provisces, and agreements, hereinafter reserved and contained on the part of the said (lessee), his executors, administrators, and assigns, to be paid and performed, and also in consideration of the sum of five shillings, &c., he, the said (lessor), doth demise and lease" unto, &c.
(u) Another form: "Witnesseth, that as well for and in consideration

Witnesseth, that in consideration of the yearly In an underrent hereby reserved, and of the covenants, &c., he, the said A. B., doth by these presents grant, demise, and lease, unto the said C. D., his executors, administrators, and assigns, ALL, &c.

Witnesseth, that in consideration of the yearly In a lease rent, covenants, and agreements, hereinafter re-under a power. served and contained on the part of the said (les-(Common see), his executors, administrators, and assigns, to form.) be paid and performed, he, the said A. B., doth by these presents grant, limit, appoint, and to farm let, unto the said C. D., &c.

Witnesseth, that in consideration of the yearly By a tenant and eventual rents hereinafter reserved, and of the der a power covenants and agreements hereinafter contained, in a settlewhich on the part and behalf of the said C. D., his executors, administrators, and assigns, are or ought to be paid, observed, performed, fulfilled, and kept, he, the said A. B., (n) by virtue and in pursuance of the power and authority given and reserved to him in and by a certain indenture bearing date, &c., and made, or expressed to be made, between, &c., DOTH demise and lease unto, &c., ALL, &c.

Witnesseth, that as well for and in consideration In a repair-

of the surrendering and yielding up of a certain indenture dated, &c., and made, or expressed to be made, between, &c., whereby the said A. B. did demise, &c., and for other good causes and valuable considerations him, the said A. B., hereunto moving, he, the said A. B., doth by these presents demise grant and to form let? demise, grant, and to farm let.

(v) Or thus, when with the approbation of a consenting party: When the "Witnesseth, that in consideration of the yearly rent, covenants, and power is exagreements, hereinafter reserved and contained on the part of the said ercised with (lessee), his executors, administrators, and assigns, to be paid and per-formed, he, the said A. B., by virtue and in pursuance of the power or tion of the authority in that behalf given to him by a certain indenture dated, &c., consenting (being the settlement made on the marriage of the said A. B. with M., his party. late wife, deceased,) and with the approbation of the said E. F., testified by his being made a party to and scaling and delivering these presents."

(w) Or say: "By force and virtue of a certain power and authority to Another him given or reserved in and by a certain indenture of settlement bearing form. date, &cc., (not naming the parties, only the date,) and of every other power, right, and authority, whatsoever, him hereunto in anywise enabling."

Or thus: "He, the said A. B., as well by virtue of the said power con-

tained in the said recited indenture of settlement, and of all and every or any other power or powers, authority or authorities, whatsoever, to him, the said A. B., in this behalf belonging, or in anywise appertaining, doth," &cc. (See note (n) to p. 694, as to leases under powers.) ing lease.

of the costs and charges which the said E. F. will expend and lay out in repairing and amending the hereinafter demised messuage or tenement, and also for and in consideration of the yearly rent and covenants hereinafter reserved and contained on the part of the said E. F., his executors, administrators, and assigns, to be paid, done, and performed, they, the said A. B. and C. D., for themselves and their successors, &c., DOTH demise and lease.

(11.)In a building lease.

Witnesseth, that as well for and in consideration of the great costs and charges the said C. D. hath already been, and will be at, in the building and finishing several new brick messuages or tenements on the ground hereby leased, or intended so to be, and in consideration of the yearly rent, &c., he, &c.

(12.)In a lease from husband and wife under a general pointment.

Witnesseth, that in consideration of the yearly rent hereinafter reserved, and of the covenants, conditions, and agreements, hereinafter contained on the part of the said (lessee), his heirs, execupower of ap- tors, administrators, and assigns, to be respectively paid, observed, and performed, they, the said A. B., and M., his wife, in exercise and execution of a general power of appointment reserved to them jointly by a certain indenture of release bearing date the 5th day of May, in the year of our Lord 1838, and of all other powers and authorities in anywise enabling them, or either of them, in this behalf, do by these presents demise, lease, and farm let, unto the said C. D., his executors, administrators, and assigns, ALL, &c.

(13.)In a lease by a married a power reserved to her riage settlement, and in which the consenting party.

Witnesseth, that in consideration of the rents, &c., she, the said M. S., by virtue of, and in pursuwoman in pursuance of, a power given and reserved to her, in and by an indenture of settlement dated the 10th of in her mar. June, 1837, and all other powers enabling her in that behalf, and by and with the privity and consent of the said R. S., testified by his being a party husband is a to and signing, sealing, and delivering, these presents, DOTH demise and lease unto, &c.

Now this indenture witnesseth, that for the pur- In a mining pose of carrying the said agreement into effect, and lease by a mortgagee in consideration of the several rents, royalties, re-by virtue of servations, and sums of money, covenants, clauses, a power in the and agreements, hereinafter reserved and contained, mortgage deed. on the part of the said (lessees), their executors, administrators, and assigns, to be paid and performed, he, the said (lessor), in pursuance and by virtue of the power and authority contained in the indenture of release or mortgage hereinbefore referred to, and of every other power or authority enabling him in this behalf, doth by these presents grant and demise unto the said C. D., his executors, administrators, and assigns, all, &c.

Now this indenture witnesseth, that in pursuance In a mining of the said recited contract, and for carrying the lease. same into execution, and for and in consideration of the yearly rents, royalties, reservations, covenants, provisoes, and agreements, hereby reserved, and hereinafter expressed and contained, and by and on the behalf of the said (lessee), his executors, administrators, and assigns, to be paid, done, and performed, he, the said, &c., DOTH demise and lease.

(15.)

Witnesseth, that the said A. B. and C. D., in In a lease pursuance of the trusts and authority vested in them from devisees in by the will of the said R. S., deceased, and in con-trust (2) sideration of the yearly rent, covenants, and agreements, hereinafter reserved and contained on the part of the said E. F., his executors, administrators, and assigns, to be paid and performed, do, and each of them doth, demise, lease, set, and to farm let.

Now this indenture witnesseth, that in pursuance From husof the said agreement, (y) and in consideration of the wife of lands

(y) A recital is frequently introduced in a lease of this description after Regital

⁽x) Where the whole inheritance is vested in trustees for the purposes Trustees of sale or otherwise, and they are empowered to make leases, the instru- for sale. ment for such purpose does not differ from that of any other lease by owners in fee, except that a reference is generally made to their fiduciary character, and to the instrument containing the authority under which

of which they are right

yearly rent, covenants, and agreements, hereinafter seized in her reserved and contained, &c., they, the said A. B., and C., his wife, do by these presents demise, grant, lease, and farm let, unto, &c.

(18) In a defnice of freebold and copyhold.

Witnesseth, that for and in consideration of the rents, &c., he, the said A. B., [on the nomination, and at the instance and request, and by the direction and appointment, of the said C. D., testified by his executing these presents,] (as to the copyhold parts of the lands by virtue of a license or authority for that purpose obtained from the lord or lords, lady or ladies, of the manor, of which the same copyhold lands are respectively parcel,) DOTE by these presents demise and lease(z) unto, &c., ALL, &c.

(19.)In a demise by mort-- gagor and mortgagec.

Witnesseth, &c., he, the said (mortgagee), at the request, and by the direction and appointment, of the said C. D., testified by his being made a party hereto, and sealing and delivering these presents; and also he, the said C. D., do, and each of them doth, by these presents demise and lease unto, &c.(a)

when lease granted by husband and wife.

this manner: "Whereas the said A. B., and C. his wife, are seized of or entitled in right of the said C., to the messuage, &c., hereinafter mentioned, for an absolute estate of inheritance in fee simple, and they have contracted with the said (lessee) to grant to him a lease thereof for the term,

License from lord of manor.

and subject to the covenants and conditions, hereinafter contained."
(2) See p. 520, note (c), and see p. 662. The power of licensing is not customary, but annexed to the person of the lord in respect of his estate in the manor.—See Coke's Copyh. sec. 44, p. 129. It seems, therefore, the purchaser of a lease of copyhold may require the production of the lord's title to license where the lease has been made by virtue of the same.

Recital.

(a) See p. 570, note (k), for the recital sometimes introduced in a least of this description.

THE END.

INDEX.

ABATEMENT—proviso for abatement of rent in cases of fire, according to the nature and extent of the damage, 292

Abolition—of ancient tenures, p. l, note

Acceptance—by a landlord of another to-nant, 127—by landlord of key of house, ib.—of rent after forfeiture a waiver of the forfeiture, 674

Account—books of account to be kept by

lessee of mines, 84, 85, 617

Acknowledgment—of the receipt (by tenant) of declaration in ejectment, 16, n. (s), 402—by a tenant as to the time of his entering, 428

Acquiescence—of landlord to assignment of lease, 157, 158

Action—as to action for rent of lodgings, 34—on the action of ejectment, 362for damages in ejectment, 412

Administration—must be taken out previous to bringing an action against te-

nant, under the statute 4 G.II.,c. 28. 150 Administrator—assignment of leasehold property from an administrator, 157—

Administratrix—as to underletting, 660 Admission—of copyhold property, 11fees on admission, 12, n. (b)—the lord considers the surrenderor as tenant, until the admission of the surrenderee, 12 n. (e)

Admittance—as to the admittance of a vendor to copyhold property, prior to surrendering to a purchaser, 117, n. (a) Advance—rent paid in advance, 39, n. (t)

Adverse Passession—see Ejectment Affidavits—service of declaration in ejectment, 16, 399—how the uffidavit must be entitled, 16—as to service in general, ib., n. (a)—as to acknowledgment by tenant, ib., n. (s)—of service on several demises, 17—the requisites of such affidavit, ib.—when one action is intended or more, ib., n. (v)—of service of the declaration on the wife, 17—how to be stated, ib., n. (r)—of service of declaration on one tenant, and the wife of another, 18—when on the child or servant, ib., $n_{\omega}(\omega)$ —when on any other of the family, 19—if service according to the statute, 4 G. II., c. 28, (premises unoccupied,) ib .- form of affiduvit required by the act 1 G. IV., c. 87, s. 1, in addition to the

usual affidavit of service, 20—form of affidavit when the usual affidavit of service can be effected, 20, n. (y) when motion made thereon, ib., n. (z)—when held under an agreement, 21, (a)—variations as to tenancy, 22, (notes)—affida-vit of the due taking of the recognizance under the act, 1 G.1V., c. 87. 23—of the justification by sureties, ib.—affidavit to move for judgment in ejectment, under the statute, 1 W. IV., c. 70, what must be shown under this stat., ib., n. (i) -affidavit for rule for judgment on proceedings in ejectment, on a vacant pousession, 25 as to the letter of attorney, 25, n. (k)—of the due execution of a submission to arbitration, 26—of the service of a consent rule with an allocatur, and demanding costs, 27—of the enlargment of time, 27, n.—when payable by lessor of plaintiff, 27—of the due execution of lease and release, 28.

Agent—distress by, for rent, 341—as to agreement for lease with an agent, 639

—agent's responsibility, id., n. (a)
Agreements generally—the import of an agreement, 29—the requisites of, ib.the stipulations, ib., 30—as to the stat. of frauds, ib.—the disabilities, 28, n. (q) not to be against the laws of religion, or morality, ib., n. (u)—as to parol agreement 30—when under seal, ib.—the formal parts of an agreement, ib.—as to the testimonium, ib.—as to voluntary agreements, 30, n. (w)—testimonium, 30, 31—liability of personal representatives though not named, 31—different sorts of agreements, ib.—the remedy for breach of an agreement, ib.—interposition of courts of equity, 32—when set aside, ib -as to specific performance, 32, n. (e)

Agreements for lodgings—what are lodgings, 33—how let, ib.—when furnished ib.—terms, ib.—as to reut, and notice to quit, ib.—periods, ib.—custom as to notice to quit, ib.—where premises are divided, ib., n. (i)—payment of rents, 34—inquiries to be made by lodgers, ib. when injurious to public morality, ib.~ as to actions for rent, ib.—the operation of the stat. of frauds, as to agreements for lodgings, ib. agreement for letting unfurnished lodgings, 35-for letting and taking apartments from week to

week, ib.—for letting apartments for a year, ib.—for furnished lodgings, 37 another form with inventory, 38—a general form, 39-if the heirs are to be bound, ib., n. (s)—if rent is to be in

advance, ib., n. (l)

Agreements for Leases—should be explicit, 41-no parol evidence can be adduced to explain, ib.—when it is intended to prevent assignment, ib.—as to covenants to repair, and insurance, ib .- as to the statute of frauds, 41, n. (v)—as to usual covenants, ib., n. (x)—as to repair and insurance, ib., n. (a)—if any exception be intended to be inserted in the lease, agreed for, 42—as to warranty for title in agreements for leases, ib .- or for inspection thereof, ib.—stipulation as to usual covenants, ib.—as to the construction of agreements operating as leases or not, 42, 43-45, 46, 47, 48, 49-the plan of preparing executory agree-ments for leases, 49—the outlines of an agreement for a lease, ib.—an agreement for the lease of a house, 50—plan of an agreement for a lease of a farm with summary of the covenants necessary, 50 n.(δ)—agreement for lease of a house, including the use of the furniture, 52 for the lease of part of a house, 54for the lease of a house with particular stipulations, 55—for the lease of a farm and lands, 57—for letting a small farm from year to year, 61—for letting a nill, machinery, and lands, 65—agreement or conditions, with a summary of usual covenants for letting a farm on lease from year to year, 69—agreement for leasing mines, 79—agreement for sale of timber, -agreement permitting mortgagee to lease, 93—agreement for a building lease, 98—agreement to grant a lease for building by a sub-lessor, 100—another form where a sub-lessor agrees to advance a sum of money when the building is partly erected, 104—for building a row of houses, 107—for partition, 111—for exchange, 113—for landlord to build up premises destroyed by fire, 114for the purchase of freehold, copyhold, or lesschold, 116—the construction of tenancy on a purchaser under an agreement taking possession before completion, 116, n. (d)—for an assignment of lease for lives, 120—for letting a dairy of cows with pasturage, 122 remarks on letting chattels, 123, n. (h), 126 n. -observations and cases in respect to agreements, 127—as to tenancies from year to year, ib .- acceptance by landlord of another tenant, ib.—tenants delivering up the key or possession, ib.as to acts of ownership exercised by landlord, ib .- re-letting by landlord, 128—how far a tenant from year to year

is bound to repair, 123—remedy for breach of agreement, ib.—pressing a person to grant a lease, 130—as to counts in declaration, ib.—as to failure in giving possession, 131-as to covenants, ib.—as to agreements for under-leases, ib.—as to tendering lease where the expense is agreed to be paid by lessor, 132—when the court will diss a bill for specific performance of an agreement for a lease, ib. -as to specific performance of a parol agreement, for a lease, ib.—refusal to execute a lease tendered, ib. — tenant committing breaches of covenant, not entitled to a specific performance, ib.—es to executors of tenant in respect to reversionary term, ib.—when lessor by his cond considered as having waived objections to the title, 133—insolvency of lessor, ib. -bankruptcy of lessee, 134—recitals of,

Allowance—to be made to tenant for draining on quitting, 74

Alteration—in award, 217—of declaration of ejectment, 362

Amerciament—distress for, 317

Annuity — what, 147 — habendum in a

demise for securing, 470
Apartments—contract for letting, 35, 36,

Appearance—to ejectment, 362

Appointment—demise by husband and wife under a joint power of appointment, 526.

Apportionment—of rent, 135—what rents are, and of the different species of, id., n. (e), 135—as to apportionment before the stat. 11 G. II., c. 19, 136—cases decided respecting, ib., n. (d)—as to the statute 4 W. IV., c. 22, for amending the former act, 137—deed of apportionment of rent. 140—clauses of apportionment of rents, 144-146 - observations and cases on reut, 147

Appraisement—recital of appraisement and valuation, 229—of goods distrained, stat. as to, 321—form of, in distress, 336 Apprenticeship—to a farmer and grazier,

298—to an husbandman, 300

Arbitration—affidavit of the due execution of a submission, 26—clause in agre ment between landlord and tenant, 65, n., 97-in what manner matters in realty may be submitted, 175—as to awards, 207—forms, 210, 213—observations and cases, 215—clause of arbitration in a lease of mines, 619

Arrears—distress for rent in arrear, 338
Assign—covenant by lessee not to assign,

495—licenses to assign, 657

Assignce—what in deed, and what in law, 151, n. (q)—liability of assignce, 196—of lease, how far bound, 246, n (4)

Assignees in bankruptcy—as to leases of bankrupts, 153, and n. (s)—as to the

usual covenant and indemnity against payment of rent, and performance of covenants in lease, assigned by as-

signes, 190, n. (*l*)

Assignments—on the nature of signments, 151 — words to constitute, ib. — statute of frauds as to, ib. — as to what assignments are appropriated, ib.—what necessary to make an assignee, ib.—definition of, ib., n. (l)—words in assignment of chattels, ib., n. (m) assignment of a perol lease, ib., n. (o)—what is an assignee in deed, and what in law, ib., (l)—the difference between an assignment, and an underlease, 152—consideration, ib. observations as to the covenants in an assignment, ib.—bankruptcy of lessee, 152, 153—the operation of the stat. 6 G. IV., c. 16, as to leases, 153, 154—as to the covenant not to assign, when lessee becomes bankrupt, 153, n. (s)—assign-ment of a lease for the residue of the term of twenty-one years, 164—assignment of a lease from the representative of a lessee, where the lessor joins as a consenting party, 157-assignment of a lease with household goods, from an administrator and others, the next of kin of the deceased, to trustees in trust for their mutual benefit, 159-assignment of lease with a policy of insurance, 163 assignment of a lease for twentyone years, sold by auction, 169—assignment of leaseholds for lives, 171—assignment of leasehold premises in trust, to sell, and for dividing the same pursuant to an award, 175—assignment of a contract for the sale of a lease, 178assignment of leasehold property from old trustees resigning, to new trustees appointed in their stead, 180-assignment of leaseholds under a fiat in bankruptcy, 187—assignment of a policy of insurance against tire, 191-when the goods are insured also, ib., n. (p)-observations and cases on assignment, 194—construction of assignment, 194, assignment of a replevin bond, 238. n. (y)—recitals of, 690

Assignor—cannot distrain, 340

Attestation—of a lease in ejectment on a vacant possession, 486, n.(z)

Attested Copies — stipulation as to an agreement for sale, 118

Attorney-powers or letters of attorney,

for distress, entry, &c., 660

Attornment—the signification of, 200—how made, ib.—why formerly made in grants, ib.—what attornment amounted to, ib.—the stat. 4 Anne respecting, ib. and of 11 G. 11., ib.—how far applicable in respect to mortgages, ib.—why it has in a great measure ceased, ib., n. (v)—still applicable to a receiver, or in cases of

a recovery in ejectment to save expenses, 201—form of attornment in an action of ejectment, 201—by tenants to a mortgages or other person after judgment in ejectment, 202, 203—form by indorsement, 202—attornment by tenants to the mortgages, by the direction of mortgagor, without suit, 204—memorandum of attornment by a mortgagor when a receiver is appointed, ib.—form of a schedule in an attornment, ib., n. (y)—direction by assignees of a mortgagor in bankruptcy, to attorn to mortgages, 205—when an attornment requires a stamp. 206, n. (a)

Auction—recital when land is put up to let by auction, 107, 140—conditions of sale by auction, 264—observations on, 277—as to memorandums of sale by,

280, 283

Auctioneer—memorandum to be signed by auctioneer at sale, 280, 282 Authority—to distrain, 329, 332, 654 Awards—of the stat. 9 & 10 W. III., em-

powering arbitration, 207—the object of the act, ib.—as to parol submission, on an agreement for arbitration, as to a lease whether within the statute of frauds, 207—when the court will make the same a rule of court, 208—as to the statute 3 & 4 W. IV., c. 42, s. 39. 208—as to the power of the arbitrator under this act, commanding the attendance of witnesses, ib.—perjury may be assigned, 209—rules of evidence in arbitration, 209, 210 - form of an award between landlord and tenant, 210—award pursuant to articles contained in a building agreement, 213—observations andcases in respect to awards, 215—how made. ib —the requisites of an award, ib.—for what it may be made, 216—as to awarding general releases, 217—as to the execution of an award, ib.--notice of same to parties, ib.—delivery, ib.

Bailiff—agreement on engaging a bailiff for the management of farms, 87

Bankrupt—as to assignment of leaseholds by, 152, 153, 154—assignment of lease-

holds under a fiat, 187

Bankruptcy—assignment of leasehold under a fiat, 187—as to the vesting of the real and personal estate, which formerly required to be assigned, 187, n. (l)—when commissioners decline accepting lease, ib., n. (m)—as to the covenants and indemnity in assign ments of leasehold in bankruptcy, 190, n. (n)

Bargain and Sale—as to enrolment of bargains and sales, under the act for the atolishing fines and recoveries, 5, n. (s)—as to a bargain and sale of chattels, 218—of timber trees, 218—of goods, and of the verbal agreement for a house,

220—of copyhold property, under a fiat in bankruptcy, 222

Bard—stipulation for going-off tenant to have the use of, 60, 515 Beasts of the Plough—as to distress of, 343 Bill of Sale-what a bill of sale is, 236of the stat. 13 Eliz., c. 5, respecting fraudulent conveyances by, 226—cases in respect to Paud under this act, ib., n. (e)—bill of sale of goods, from tenant to landlord, 227—delivery of possession, 228, n. (f)—of goods distrained for rent from landlord and person making the distress, with the constable and appraiser, to a purchaser at the valuation fixed, 229—of household goods and furniture from tenant to landlord, by way of security for rent, and money due and owing, including a power of attorney for delivering possession of goods, 230—form of memorandum of the delivery of possession, by virtue of the power, 233, n—observations and cases on bills of sale, 234—as to bills of sale of chattels, ib. - when absolute and when conditional, ib.—as to the possession of the goods, ib. - as to assignment by a creditor in embarrasced circumstances, ib .- as to the consideration, ib .- as to bill of sale, when a security (in regard to the possession), 235. Bonds—the nature of a bond, 236—when termed a specialty, ib.—representatives when bound, ib.—legality of conditions. ib.—as to the necessity or not of signing, 236, n-Bond in replevin, 237-bond as a security to landlord, by tenant and his surety, for payment of rent reserved

on granting a lease, 238-for the performance of covenants generally, 239, n. (c)-bond of indemnity upon the assignment of long leaseholds, to save the lessee or assignor harmless from the payment of the rent, and performance of covenants generally, ib., n. (c)—bond of indemnity to an assignee to save harmless from the payment of rent, and performance of the covenants in the original lease, 240—bond to indemnify a lessee from ground rent, 242 -bond of indemnity against a defect in title of leasehold premises, 243-another form, 244, (A) -bond of indemnity to a person per-mitting his name to be made use of in an ejectment suit, 245-another form of condition, 248,(1)—bond of indemnity by a landlord to a tenant, upon his agreeing to pay the rent as usual, when the title to the premises is in litigation,247bond of indemnity to a purchaser, providing against losses, occasioned by one of the mesne assignments being missing, 250—plan adopted when old deeds are lost, 250, n. (p)—mode of recital in lost

bond; ib., n. (q)—bond of indennity upon the sale of part of leasebold premises, to indemnify the assigner from payment of any part of the rest reserved by the original lease, 251—when the condition extends as to quiet enjoyment, 252, n.—bond as a colinteral security for the performance of a contract for the sale of timber, \$52-bond for securing money given with a deposit of a lease, and the assignments th ereof, as an equitable security, 253—arbitration bond between landlord and tenant, 354 cuses as to arbitration, 255, n.—bood by a tenant to a landlord, for delivering up possession of premises and payment of a sum of money on being released from his contract for a lease, 257 observatious and cases, 258-as to obligor and obliges, ib.—condition, ib. -when good, ib.—as to surety for, ib. -as to surety for payment of rent, is. principal and surety, and right of obligee when damnified, 250—sureces, th.—recital in condition, th.—when obligor will be estopped, 260—when the condition is impossible, ib.—liability of surctice, d.bankruptcy, 261 — composition, id. when time given by principal, is.—co-sureties, 262—contribution of sureties, ib.—the effect of a release to the principal debtor, ib.

Boundaries—how far a tenant is bound

to protect, 646 and notes. Builder—contracts by, 95, 107

Building—as to the expenditure of insurance money between landlord and tenant in re-building, 42-award in parsuance of a clause of arbitration in a building agreement, 213—covenant in a lease to build houses, 488-leases for building, 593, 596, 509

Building Act—as to, 106—as to partition

walls, 108, n. (s)

Building Agreements—98, 100, 104, 107 when in London, 106, n. (g)—as to the building act in respect to partition walls, 108

Breach-remedy for breach of agreement,

31, 129

Brewer — covenant where the brewer is a landlord, to buy beer, &c., from him, 299, n. (j), 538

Casual ejector—how to obtain judgment against, 16

Ceremonies— in making leases, 698 Cosser-of term on the destruction of pre-

mises by fire, 292, n. (e) Cestui que use—for years, has a complete

estate without entry, 481, n. (p) Cestui que trust - assignment of lesseholds from old trustees to new trustees, 180

Cestui que vie—the meaning of, 6, n. (e) Chamber-agreement for letting, 35

Chancery—specific performance, 132 Chattels--as to bill of sale of, 226— of the stat. 13 Eliz., regarding, ib .-- observations and cases respecting bills of sale of chattels, 234

Chattels real—what are, 9

Chivalry—ancient tenure by, 1, n. (d) Churchwardens—as to description of, in an action of ejectment, 434

Coal Mines—conditions for letting 79 lease of coal mines, 606

Cognovit—in ejectment, 404 — another form, 405

Co-heirs—as to, 12

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Collateral covenants—as to, 307

Commissioners in Bankruptcy – when they decline accepting a lease, 187, n.(m) Common Law—distress at, 317, n. (d)

Complaint—form of, before two justices, under the act 1 & 2 Vio., c. 72. 423

Condition—as to an impossible condition,

Conditions—for letting a farm yearly, 69—for leasing mines, 79—for a building

lease, 98 Conditions of Sale — forms of, 264 — of leasehold property, ib.—of a fee farm rent, 266—for the sale of timber, 267,—for letting premises on lease, 269—pursuant to an order of the high court of chancery, 271—a general form of conditions of sale, 272—observations and cases, 277-how construed, 277-conditions should be accurate, ib.—as to covenant by purchaser of leasehold, 276 -as to verbal agreement by purchaser for indemnity against the rents, ib .when the vendor is only an assignee, -when vendor is executor of leasehold property, ib.—cases decided as to conditions of sale, ib.—incidents of sale, ib.—purchaser of several lots, 278 —reserved bidding, ib.—non-compliance with the contract, 279—memorandum of sale to be signed by auctioneer or agent, 200-memorandum to be signed by purchaser, ib—a short form, ib.—notice of appointment of a reserved bidder, 281-notice of acceptance by intended reserved bidder, ib.—cases as to memorandums signed on particulars and conditions, 282

Confirmation—of a lease, 517

Consent Rule—affidavit of service with allocatur, 27

Consideration—as to considerations in agreements, 119

Contingent Remainder—the nature of,

Continual Claim—as to, 432, n. (p) Contracts—see as to contracts, 29--what necessary to make, 119—assignment of a contract for the purchase of leasehold premises, 178

Construction—of instruments, whether

operating as leases or agreements, 44of leases as to their operation, 628, 629 Conveyance—of copyhold lands, 11leaseholds for lives, 171—from landlord to his lessee on his becoming a purchaser of the inheritance, 709

Co-parcenary—as to, 12

Copyhold—estate by, 11—statute 3 & 4 W. IV., c. 106, applicable as to the admission of the half blood, ib.—conveyance of, ib.—lease of a farm, part free-hold and part copyhold, 552—lease of copyhold by virtue of a license from the lord of the manor, 520—form of license to demise copyhold land, 636, n)—as to the license to demise copyhold, 661

Costs—affidavit of demanding costs, 27 Course of Husbandry—stipulation to cultivate lands according to, 63, 73

Covenants—what are usual covenants in a lease of a house, 41, n. (x)—the covenant not to assign not deemed a usual covenant, 51, n. (d)—usual covenants in reference to the nature of the property, 60, n. (n)—As to covenants in a bargain and sale of goods, 221, n. (b)—form of covenant each by himself alone, 284—by two, jointly and severally, ib.
—by three or more severally, as to their own acts and acts of wife, ib.-by joint tenants, 285—by two entitled in undivided moities, ib.—common form by husband for himself and wife, 286--by two, as to their distinct interests, 286short form of covenant in an assignment of lease, including the usual covenant by assignee for payment of the rent, and the usual indemnity against the same, 286—observations on the mode of shortening the covenants, 286, n. (s)—covenant by an assignee to perform covenants in au original lease, (except the covenant for payment of rent,) and to indemnify assignor, 289—covenant by landlord to repair walls, roof, and outside of premises, 290—covenant for lessor to enter and view the state and condition of premises on one day's notice being given, and for tenant to repair on such notice, ib.—short covenant in a lease to insure buildings against fire, 291—for abatement of rent in case of fire, according to the nature and extent of the damage, 292—for a lessor to affix a notice to let, and show premises during the last six months of the term, 294 to observe the conditions contained in a former lease between the same parties, as if they had been repeated in the present, ib .- of indemnity against fee farm rents, with the grant of a power of distress, 295—by lessee of a public house not to convert the same into a private house, 296, 538, n. (j)—in au

assignment of lease to indemnify assignee from eviction on account of breaches of covenant in lease, ib.--covenant not to creet buildings against part of premises, 297-not to erect a mill to deteriorate one conveyed, ib.deed of covenant by way of indenture of apprenticeship to a farmer and grazier, 298-another form to a samer in husbandry, 300-deed of covenant for the production of a lease, 303—observations and cases, 306—what is a covenant, ib .- express or implied, ib .- real or personal, ib.—inherent or collateral, 307—the use of covenants, ib.—covenant in gross, ib.—joint and several, 308—construction of covenants, ib. usual or customary covenants, 309—qualified covenants, ib.—breach of covenant, 313—liability of parties, ib—covenants running with the land, 314 -dependent or independent covenants,

315—discharge of covenant, 316 Covenants in Leases—covenant to pay rent and taxes, 488, 507, 520, 524, 527, 535, 541, 546, 554, 580—covenant for payment of rent by principal and surety, ib., n. (e)—for lesses to build house on the manufacture. bouses on the premises, 489—and to paint in oil the outside wood, &c., 489, 521, and to coal tar outside wood and iron work, ib.—to expend a certain sum in improvements, 489, n. (A), 514—by tenant to repair generally, 490, 507, 521, 541,580—to paint, ib.—to insure against fire, 401—short form, ib., n. (k)—as to the application of the money if burnt down, 492—for lessor to enter and inspect with surveyors, &c., 493,521,537 549—and to give notice of defects, and for tenant to repair, ib.—for lessor to affix notice of letting the premises during the last three months of term, in .to prevent noxious trades, 494—for liberty of watercourse for landlord, ib. -and to enter for cleansing, 494-not to assign except to wife or children, 495—for re-entry on non-payment of rent, 484, 497, 505, 524, 527, 538, 543, 545—in case of destruction by fire, 498, 522—to keep outside brickwork, plastering, &c., in repair, 499—lessor to rebuild, 500—for peaceable enjoyment, ib., 515, 522, 539—for determination of lease at the end of the first seven years, 501, 523—covenant in lease of a form to imbarn on the premises, and to expend hay, &c., thereon, 508—to preserve fruit trees, 509—and to plant in case of their dying, ib .- lessee at the end of term to leave so many acres of ground stocked with hop plants, 510and to cover with woollen rags, ih .not to sow herep, &c., ih.—as to summer fallows, th.—for permitting in-com-

ing tenant to sow, &cc., 511—to preserve timber, ib.—not to fall underwood of less than seven years' growth, it—to make hedges and fences, 513—est to grub up any hedge, ib.—to permit issue to inspect premises, and the medical content in the second content is the second content is the second content in the second content is the second content in the second content is the second content in the second content in the second content is the second content in the second conten of agriculture, ib .- to permit less bring actions of trespess, 513-for tenant to warm off trespessers, 513-es venant by lessor to lay out a certain sum in improvements within a certain time, 514—lessor to supply rough timber for repairs, 514—to pay lesses for hay, straw, &c., left on premises at the end of term, 514-lessor at the end of term to pay lessee for hop poles, &c., at a valuation, 515—for lessee to have the use of barn for thrushing his last year's case of fire, 522—covenant for renewal of lease, 539—for determination of le on the death of lessee, 533 covers to buy beer, &c., from landlerd, 298, a. (9), 538, n. (1)—observations on shortening covenants in leases, and the utility thereof, 520—to cleanse wyedraughts, 536—for tenant to yield up premises in repair, 536, 542—not to convert the house let as a public house into a private house, 538—covenant by lessor to pay taxes, 544 to mana lands in a husbandlike manner, 546 to spend on premises all the muck, &c., es to crope of grain to be taken ib .- lesses not to maffer any waste, 549 covenant to pay eventual reats, 504, 554-in a lease of mines of ore to render sixth dish, &u., 604—by the leases to work mines, ib.—for quiet enjoyment of mines, 607—covenant for leases to convert into coke such coals only as are customary, 614—covenant by lessee to keep accounts as to mines, and to de-liver true copies, 617, 694—for peaceable enjoyment of mines, 621—for lessor to purchase engines, ib.-to pay rent, royalties, and taxes, 622—to a nage mines in a workmanlike menner, 623—as to covenants for renewal, 639—as to covenants to repair, 640—as to express covenants in respect to husbandry, 641—as to implied covenants, 643—as to covenants in respect to tillage and improvements, 645—for title, 710

Cows-agreement for letting a dairy of 00ws, 122

Crops — as to crops to be taken by tenant, 72-landlord's right to take, 408

Curtesy—of the estate by curtesy, 8— to the marriage, ib., n. (p)-as to the scizin, ib., u. (1)

Custom—gavelkind, 12 Customary Covenants, 309 Dairy -agreement for letting, 123 Damage—as to the penal clause in agreements, 98, n.(0)

Damage feasant—goods and cattle dis-

trainable, 317, n. (d)

Date—as to date in leases for lives, 481 Death—renewal of leases on, 586, 589 Debt-recital of debt owing, as also rent,

230

Declaration—as to covenants in an indorsement of a lease for a further term. 519

Declaration in Ejectment--affidavits of service, 16 - form of declaration in ejectment on single demise, 374—how entitled, ib., n. (t)—as to the demise, ib., n. (v)—as to the parcels, 375, n. (v)—parish or place, n. (x)—the term of years, n. (y)—as to the notice, n. (z), 376—declaration on double demise with notes, 377—declaration under the stat. 1 G. IV., c. 87. 379—declaration under the stat. 1 W.IV., c.70. 380—declaration on a vacant possession, 383-as to service of declaration, 384, 397, 408, 409—time of service, 397—as to affidavit of service, 399-explanation of services, 400—acknowledgment of service, 402—as to notice under declaration in ejectment, 376, 412

De Donis-statute as to entails, S Deeds—covenant for production of, 308 Defence—to the action of ejectment, 362 Defeazance—on a warrant of attorney in ejectment, 407, n. (w)

Defect—indemnity against defect of title, 243

Delivery—of possession of goods, 233,n.(h) Demand—notice of demand under stat. 1 G. IV., c. 87. 368

Demise—as to demise in declaration of ejectment, 362, 374, 375—demise and confirmation of a lease, 517

Dependant Covenants—as to, 315 Deposit—at sales by auction, 262, 282

Description—of premises in declaration in ejectment, 375—of parcels in lease, 502 and notes—of premises in notice to quit, 666

Destruction of Premises—stipulation in agreement in case of accident to premises, 57—liability of tenant when house is burnt down, 41

Determination—of tenancies, 363

Differences—between landlord and tenant to be settled by reference, 68, u. (q)clause for settling in a building agreement, 97

Delapidation—notices, 674

Disability—disabilities of persons as to entering into agreements, 29

Discharge of Covenant, 316

Disputes—in an agreement for letting a farm disputes to be settled by arbitration, 68, n. (q)—in a building agreement to be settled by reference, 97

Distress—bill of sale of goods from tenant to landlord to save the expense of distress, 227—for rent, 317—power of dis-training how originally given, 317 statutes relating to distress, ib.-who may distrain, ib.—time within which the distress must be made, ib.—distress at common law, ib., n. (d)—by prescription, ib., n. (e)—of the statute 3 & 4 W. IV., c. 27, s. 2—by executors, 32 H. VIII., c. 37. 31d—upon lands demised for any term for arrearage, 3 & 4 W. IV., c. 42, s. 37, ib.—arrearages, ib. sec. 38, time of distraining for, ib.husbands in right of their wives, ib. for what a distress may be made, ib. recovery of different rents by 4 G. II., c. 28, s. 5, ib.—what preperty may be distrained, 319—distress on sheaves or cocks of corn, &c., 2 W. & M., ib. corn, grass, &c., 11 G. II., c. 19, s. 8, ib. -chattels prohibited from being distrained, 51 H. III., s. 4, ib.—chattels in use, ib.—when to be made, 320—arrears due on leases determined when distress to be made, ib.—how goods are to be disposed of, 2 W. & M., sess. 1, c. 5, a. 2-impounding, ib.—appraisement of the goods distrained, 321sworn appraisers, 2 W. & M., ib.—fraudulent removal of goods, 11 G. II., c. 19—persons assisting, sec. 2, ib.—value of the goods, sec. 3. 322—appeal, sec. 5, ib.—assisting, sec. 7, ib.—limited costs when distress shall not exceed £20., 323—schedule to the act as to allowance, 324—application to a justice by party aggrieved, sec. 2 ib .- brokers to give copies, ib. -- recessive distress, remedy for, ib.—distraining when no rent is due, 2 W. & M., ib.—irregularity of distress, 11 G. II., c. 19, s. 19, ib.—tender of amends, 325—distress not to be driven out of the hundred, &c., I W. & M., ib—pound breach, ib.—as to supply to heaste in pound, 5 & 6 W. IV., c. 59, s. 4, ib.—on distress for rent in arrear, ib.-when to be made, ib., n. (c)—when there are separate demises, ib.—should be for the whole rent, ib.—tender of rent, 326—distress may be taken for any kind-of rent, ib. property liable to distress, ib.—goods privileged from distress, ib.—animals fere nature, 326, n. (1)—furnaces, &co., 327—goods in the custody of the law, ib.—goods distrainable at common law, ib.—goods found on premises. ib — -goods found on premises, ib what forms part of the freehold is free from distress, ib., n. (n)—sheriff's execution, ib., n. (o)—sheriff or officer not to carry off straw, &c., contrary to covenant entered into for landlord's benefit, ib., n. (q) cattle escaped, 328—damage feasant, ib.

-practical directions for making a distress, ib.-how distress made, ib.-by landlord or other person authorised, 329—as to notice of distress, ib.—must be made in the day time, ib.—removal of the goods, ib.—appraisement and sale, 331 — form of landlord's authority to broker, 332—form of inventory of goods distrained, 333—notice of taking the distress, ib., and see n. (p)—form of notice of distress on growing crops, 334 —form of notice of distress for an annuity or rentcharge, 335—memorandum of appraisement to be written on the inventory, and signed by constable, ib.
—directions as to endorsing memorandum of appraisement, ib., n. (t)—appraisement stamps, ib.—appraisement by valuer, 336—administering oath, ib. tenant's consent for bailiff's continuing in possession beyond the limited time, 337—replevying the distress, ib.—provisions as to replevying 52 H.
III., c. 21, & 11 G. II., c. 19. 337 sheriff to restore goods replevied, 338proceedings of distrainor, ib.—observations and cases, 340—who may distrain, 341—assignors cannot distrain, ib.yearly tenant letting the premises verbally may, ib.—distress by joint tenants, tenants in common, &c., ib.—by agents and receivers, 341 - mortgagees and others under agreements for leases, &c., ib.—the necessity of a demise to distrain, 341—distress upon tenant holding over, 349-goods liable to distress, ib. growing crops, ib .- standing crops, 343—when crops are taken in execution, ib. — goods with a tradesman in the way of his trade, ib. — machinery in use, ib.—materials to be manufactured, 344—chattels privileged or not, ib when to be made, 345—how to be made, ib.—how disposed of, ib.—appraisement, 346—suspension of right to distrain, ib .- fraudulent removal, 347wrongful distress, 349—as to poundkeeper, 350—double value, ib.—double rent, 351—taxes, 362

Distribution—assignment by parties en-titled under the statute of distribution to testator's effects, consisting of lease-hold property and chattels, to trustees

for their benefit, 159

Double Rent—cases as to, 149, 150—no-

tice to quit, 149

Double Value—cases as to, 149—notices to quit or pay double, 672

Dower—as to an estate in dower, 7—the objects of the new dower act, ib.

Dower Act—sections of, 7, n. (e) 8, n. (g), (h), (i), (j)

Draining--stipulation as to, in agreement for lease, 75, (a)

Duress—as to bill of sale by prisoners, 226

Dwalling House—as to division of, into several apartments, 33—lease of part of a dwelling house, 523
Effluxion of Time—determination of te-

nancy by, 363

Rjectment-affidavit of service of cietment to obtain judgment, 16—general forms of affidavita, 16-28, and notes—on the action of ejectment, 361—how maintained, ib.—the fictition of the action, ib., n. (a)—as to the stat. 3 & 4 W. IV., c. 27, ib.—as to right of entry, 361, n. (b)—as to the destruction of a right of entry, ib., n. (c)—the system of the action, 362—defence of the action, ib.—the alteration of the respection is the respection of the system. the alteration of the names in the declaration, ib.—determination of t nancy, 363—as to the act 4 G. II., c. 25, s. 2, where no sufficient distress, 363 payment of rent and costs, 365—as to compensation, ib.—objects of the stat. ib.—as to the stat. 7 G. II., c. 20, in respect to ejectments by martgagers, 365—cases decided as to this stat., 365, (1)—as to the stat. 11 G. II., c. 19, respecting tenants giving landlords notice of ejectment being served, 366—cases as to this stat., ib., n. (m)—as to the stat. 1 G. IV., c. 87. 368—application of the stat., ib., n. (o)—form of demand required by the stat., ib. n. (p) as to the stat. 11 G. IV., and I W. IV., c. 70 for the more speedy recovery in ejectments against tenants, 379—application of the stat., ib., n. (r)—forms of declaration in ejectment, 374—on single demise, 374—on double demise, 377—under the stat. 1 G. IV., c. 87. 379—under the stat. 1 W. IV., c. 70. 380—on a vacant possession, 382—as to service of deslaration in ejectment, 384—on joint te-nants, ib.—on one of several defendants, ib.—on under joint tenants, 385—service on wife at husband's dwelling house, ib.—declaration left in shop where d fendant lived, 386—when nailed upo premises, ib. - when Christian name is not stated at the foot of declaration, 365 service of declaration on any other member of the family, 387—servant, 388—on a person appointed by the court of chancery to manage estates, 300the attorney or agent of tenant in po session, ib.—service on wife when the husband abeconds, 391-on a person left in possession, tenant abscording, ib—abscording of tenant, service by sticking up, &co., ib.—by sticking on barn door, 392—by sticking declaration on stable door, 393—service on servest of deceased tenant remaining in possession, ib.—denial of tenant, ib.turnkey of prison, ib.—time of service. 397—acknowledgment by tenant, 398 affidavit of service, 399—explanation of

service, 400—acknowledgment of service, 402—how affidavit should be entitled, 403—before whom to be sworu, ib.—cognovit in ejectment, 404, 405 warrant of attorney in ejectment, 405defeazance, 407 — observations and cases, 408 — landlord's right to take possession, ib.—to take crops, ib.—general remarks on service of declaration, 408—proceedings notwithstanding the recent acts, 410—power of justices to put landlord into possession, 410. summary powers, 411—proceedings at common law notwithstanding the stat. 4 G. II., c. 28, s. 2, ib.—as to demand under this act, ib., n. (f)—qualification of practical proceedings, ib.—action for damages, ib.—as to holding over, (1 G. IV., c. 87,) 412—notice at the foot of declaration under this act, ib.—as to provisions of 1 W. IV., c. 70, s. 36. 413 moving for judgment under this act, ib.—recognizance, 414—appearance, ib.—when undertaking given, ib.—tenancy expiring, and service in or after Hilary or Trinity terms, ib.—alteration made by stat. 1 G. IV., c. 87, s. 2, as to tenant appearing, 415--as to recovering mesue profits under this act, ib., n. (i) -securities under the act, 416—execution, ib—as to the stat. 1 W. IV., c. 7, s. I, enabling judges to certify for immediate execution, 416—as to the stat. 1 & 2 Vic., c 72, for facilitating the recovery of possession of tenements after due determination of the tenancy, 418 -the schedule to which the act refers, 422—notice of owner's intention to apply to justices to recover possession, ib. -form of complaint before two justices, 423—warrant to peace officers to take and give possession, 424—evidence between landlord and tenant at trial, ib.privity, 426—relation of landlord and tenant. ib.—parol demise, 427—determination of tenancy upon contingency, ib.—expiration of tenancy by notice to quit, ib.—tenancy commonly admitted to.—service of notice, ib.—notice by agent, 428—tenant being in possession, ib.—acknowledgment by tenant of commencement of tenancy, ib.—when no objection made to notice to quit, 429 receipts for rent, ib .- as to general notice to quit and no objection, ib., n. (f ejectment upon clause of re-entry, 430 —upon lessee assigning, 431 — when claimant is an assignee of the reversion, ib.—evidence on the part of the defendant, ib.—miscellaneous observations on the action of ejectment generally, 432 title, 433—demise, entry, and ouster, 436—action for mesne profits, 437
Ejector—as to obtaining judgment against

she casual ejector, 16, n. (p)

Enlargement—of time in a submission to arbitration, 27, n. Enrolment—of bargains and sales under the act 3&4 W. IV., c. 74. 4,5, and notes Entuil—as to entailed estates, 2—how

Emblements—signification of, 5, n. (s)—to an estate pur autre vie, 6—to an estate for years, 10

Elegit—tenant by, 10

conveyed, 4

Entrance—covenant to enable the lesser to enter, 492

Entries-mode of admission according to the general rule as to evidence, 432

Entry—on land so as to perfect term, 9, n.
(v)—entry by tenant as to time, when and how proved, 428—time allowed to make entry under stat. 3 & 4 W. IV., c. 27, 432

Equality—sum payable for, in an exchange, 113

Equity—courts of equity in respect to agreements, 31—interposition of, 32

Equivalent—on partition, 112—arbitration clause in agreement for partitions as to equivalent, ib.

Error—as to, in conditions of sale, 276

Escuage—ancient tenure, 1, n. (c)
Estates—of an estate in fee simple, 1—the signification of the word, 2, n. (g) — estate tail, 2—estate for life, 5—estate pur autre vir. 6-estate in dower, 7-

estate by the curtesy of England, 8 estate for years, 9-incidents to estates for years, 16 -by elegit, 10-estate at will, ib.—an estate at sufferance, ib. estate by copy of court roll, 11—estates by joint tenancy and tenants in common, 13, 14—of particular estates, 14

Estoppel—as to estoppel by a person making a deed, 218—when obligor of a bond is estopped, 260—as to reversioner after a lease, 636

Estovers—estovers, the meaning of, 5, & notes (w), (x), (y)—tenants entitled to, 9 Eventual Rents—in respect to, for ploughing, &c.,58, n. (m)—reservations in lease, 504

Evidence—between landlord and tenant, 434, 432, n. (o)

Exceptions in Agreements — power to enter to view, 68—to dig turves, ib.—t plant, ib.—of mines, 70—timber, ib. game, id.

Exceptions in Leases, 440—in the lease of a farm, 503, 547—general form of exceptions of timber, to plant, of game, and to plant, 441, 442—another form, 443—exception of timber and game, (short form,) 445—of timber and a carriage and drift way, 446—another exception of timber, 446—another form of exception of woods, trees, and coppices, 447—exception of mines exceptions in a mining lease, 448—of

a parcel of land and timber, 449-of a right of way, ib.—another form, 450 exception in case of fire, 529

Expiration of Notice to Quit—as to the time, 666

Expiration of Tenancy—426, 427

Executors-need not be named in agreements, 31—as to being named in bonds, 236—as to distress by, 318

Executory Agreements—as to preparing executory agreements for leases, 49

Exhibit—to affidavit, 23, n. (q)

Exoneration—of under tenant from taxes by lessee, 77

Expenses—stipulation how borne in an agreement for a lease, 53

Express Covenant—the meaning of, 306 Extracts—provision in conditions of sale, as to extracts from deeds, &c., 275

Faculty—when required as to pews in churches, 465

Family—service of declaration on any member of the family, 19, 387

Farm—plan of an agreement for the lease of a farm, with a summary of the covenants necessary, 50—agreement for the

lease of, 57—for letting, 61, 69
Farmer—apprenticeship to, 300
Fee—how applied, 1—how divided, whether absolute or conditional, ib. meaning of the word, l, n. (d)

Fee Farm-grant of fee farm reut, 457covenant of indemnity against, 295observations as to grants of fee farm

rents, 465

Fee Simple—of a tenant in, 1—further explanation, 1, n (d) — what the estate confers on the owner, 1, n. - what words necessary to create a fee simple in deeds, 2-in wills, ib.—what estate the owner of a fee simple may create, ib.—words necessary to create a fee simple in wills, before the passing of the act for the amending of wills, ib., n. (A)

Feme Covert—service of declaration in ejectment upon, 18—notice to husband previous to bringing action for double

reut, 150

Feuds-how lands are holden since the introduction of feuds, 1, n, (c)

Fences—as to preparing, in an agreement for lease, 70

erm Naturm — whether beasts for nature are liable to distress, 326, (1) Ferm Nature fera

Fiat—assignment of leasehold property under a fiat in bankruptcy, 187—bargain and sale of copyhold, 222

Fiction—of the action of ejectment, 361 Fieri Facias—when execution upon by sheriff, landlord entitled to one year's rent, 319, p. (f)

Fineson admission of copyhold, 12,

n (b)

Fire—liability of tenant when house

mises by fire to (or not to) vacute agree-

ment, 57, ib., n. (k) Fishery—lease of, 567

-stipulation by tenant not to re-Fixtures-

move, 53, n. (e)

Forfeiture — proceedings by landerd against tenant for forfeiture of let 411—as to re-entry by landlord on breach of proviso, 430—ejectment as to, 430

Forged Instrument—power of court of

chancery, 190, n.

Fraud—legal meaning of, in respect to assignment of goods, 226

Frauds—the statute of frauds, where applicable in respect to letting lodgings, 34—as to agreements for leases, 41 statute of, as to assignments, 151

Free Bench. (See Dower.)

Freehold-estates called freehold, 5-freehold interests, 9

Fruit Trees—tenant to preserve, 71—ex-ception in lease as to, 503, n. (d)

Furnished Lodgings - agreen letting, 37-with inventory, 38, 39

Furniture—contract for the lease of a house, with the use of the furniture,

Further Assurance—covenant in an assignment of lease, 156

Further Terra—endorsement in original lease for, 518

Game—tenant to preserve, 59—exception of, in an agreement, 70—lease of a royalty, 565

Gamekeeper-stipulation by tenant to permit landlord's gamekeeper to enter, 70—appointment of in a lease of a roy-

alty, 567 Gavelkindtenure in, 12

General Words - in an assignment of lease, 155, 158—in a conveyance from landlord to lessee, 710

Goods—bill of sale of, for rent, 225—as to

leases of, 126, n.

Grant—of a road or way, 454—of a right of way in consideration of the extinguishment of another road or way, 455—on the sale of a fee farm rent, 457 —of a pew in a church, 459—observa-tions and cases, 461—as to ways, ik private ways, how claimed, sb. - by grant, ib.—presumptive grants of ways, 463—by prescription, is.—ways of necessity, 464—as to grants of fee farm rents, 465—as to grants of pews, 465, 466

Ground Rents-stipulation in agreement for lease as to indemnity against, 54as to the effect of payment by the cocupier, 149—bond to indemnify an un-

der lessee from ground rents, 243 Growing Crops—distress for, 319, 342 Gunpowder - covenant to prevent lessee from storing gunpowder, 524 Habendums—in an assignment of a lease

155—habendums in leases, 467, 504common form, 468—in lease of a water corn mill, ib.—in a lease of mines, 469 -in an underlease, ib.—in an assignment of an underlease, ib.—in demise for securing an annuity, 470—in an assignment of lease and stock in trade, ib.—in an assignment by a tenant of several houses at an entire rent of one house, 471-in an assignment of leaseholds for the residue of two several terms, 472—in an assignment of lease-holds, with right of renewal, ib.—in a mortgage of leases and policy of assurance, 473—in a lease of a cottage, part of waste, from the lord of the manor and churchwardens of the parish, on the part of the freeholders, subject to restrictions from taking apprentices, &cc., 474—in a demise of a remainder expectant on an estate for life, 475special form of habendum so that a person may have a reversion in each of several leases, 475—observations and cases, 477—the office of the habendum, ib.—cases as to, ib.

Habendums in the Forms of Leases--of **a** bouse, 487, 528, 534, 540, 544, 547, 574a farm, 504, 517—in a confirmation of a lease by indorsement, 517—in an endorsement for a further term, 518—short form, 520—in the lease of a shop and warehouse, part of a dwelling house, 523—in the lease of a water corn mill and premises, 526—two habendums in a lease, part freehold and part copyhold, 552—lease with three habendums as to commencement of premises, 557—in a lease from tenant in tail, 561—in the lease of a royalty, 565, 567—tenants in common, 568premises in mortgage, 570—house and stable, 579-in an underlease, 582-in a renewed lease for lives, 587

Habere facias Possessiouem-may issue

on judge's certificate, 373

-stipulation in agreement as to hay Hayto be left on premises, with clause of arbitration as to disagreement, 68, n.(b) for tenant to sell hay on spreading compost, 552

Haybote, δ , n. (x)

Hay Grass—quantity to be sown Hay Seeds—quantity to be sown to an acre, 71, n. (u)

Hedges—as to preserving, 71—as to les-

see plashing hedges, 551
Heirs—as to the necessity of the word heirs in creating a fee simple, 2—when named in an agreement, 39, n. (s)

Hereditament—the meaning of, 2, n. (g)

Highway—on ways, 461

Holding over-by tenant, 412

Hop Yards—as to planting, &c., by tenant, 510

-agreements for lease of, 50, 52, 53 Houseof part of a house, 54—for the lease of a house with particular stipulations, 56 Housebote, 5, n. (w)

Hunting—exception for liberty of, 441, 503, 504, n. (ε)—lease of, 565

Husband and Wife—covenant by husband for himself and wife, 286—lease by, under a general power of appointment under a general power of appointment, 526—lease of a cottage and land from husband and wife for ninety-nine years, she being tenant for life, 544 lease of a wife's settled estate for life, in pursuance of a power reserved to her in her settlement, in which the husband joins as a consenting party, 540, 643

Husbandry -- covenants (express, in leases as to husbandry, 641—covenants

implied, 643

Impeachment of Waste—power of a tenant for life without, 5, n. (y)

Implied Covenant—the nature of, 306

Impounding. (See Distress.)

Inclosure—as to cultivation of lands enclosed, 510, n. (m)

Incidents—to a tenancy for years, 9 Incoming Tenant—time of entering on

a farm, 59

Indemnity—bonds of indemnity between landlord and tenant, 237, 263—to indemnify lessee from taxes, 525, n. (2) Indenture—of apprenticeship to a farmer and grazier, 298—to a husbandman,

Indorsement—assignment of leasehold premises by, 154, 157—confirmation of lease by, 517—lease for a further term by indorsement on the original lease, 518

Infant—as to agreement by, 29, n. (r)as to leases by guardians, 637, n. (u) Inherent Covenants—as to, 307

Inheritance—reference to the statute for amending the law of, 11, n.(z)

Implied Covenant—as to, 306, n. (l)

Inn—covenant by tenant of an inn to buy ale, &c., of landlord, he being a brewer, 296, 538

-as to the insolvency of a Insolvencylersee, 134

Inspection—of surveyor under an agreement for building, 96, 108

Instrument—when it shall operate as an

agreement or a lease, 43, 47

Insurance—as to the stipulation in an agreement as to repairs in case of not insuring, 41—as to the expenditure of insurance money between landlord and teuant, 42—stipulation to insure in an agreement for lease, 56, n (i)—assignment of policy with lease, 16:)—assignment of a policy of insurance, 191-covenant to insure in lease, 491—short form, ib., n.(k)

Inventory—to an agreement for lodgings,

-form of inventory in taking distrees, 35

Joint Cove usto-as to, 307—as to dis-

tress by, 340

Joint Te ants—the nature of joint te-3—covenant by, 265—distress nancy, 13—covenant by, 285—distress by, 346—notices as to quitting, 064, 671 Irregularity—as to distress, 383, 334, 332, **a.** (k)

Judgment - how to obtain judgment against a casual ejector in ejectment,

Justices—power to put landlord into pospower under the act I Vict., 418,494,680 proceedings under the act 11 G. II.,677

Kent—as to the custom of, 12

Key—as to acceptance of key of house
by landlord, 127

Knight Service-ancient tenure by, 1,

and—as to tenant breaking up pastare land, 71, n. (u)—annual value of arable land, 700—scale of the value of tillage land, according to the selling prices of wheat, id.

Landlord—definition of a landlord, llandlord's right to take possession, when, 408—to take crops, is,—jes dis-

ponendi iu, 682, n. (e)

Land Tax—as to reservation of rent free from taxes, extends to the land tax,

42, 49

Lease—when an instrument shall be construed as a lease or not, 48, 47-stipulations in an agreement for the lease of a farm, 87—forms of agreement, 50 conditions for a building lease, 98eovenant for the production of a lease, 479—what constitutes a lease, ib. usual words, ib.—powers of lessee to grant a lesser interest, ib.—the effect of a demise by a lessee, ib.—for what time a lease may be made, 480—what must concur to make a good lease, ib.—when a lease may be made to begin, tocommencement of a lease for life, ib. as to leases of freehold interests, 481 when void for uncertainty, ib.-leases in reversion, ib.—as to the wording of a lease for life, ib., n. (1)—as to the certainty of the beginning of a lease, 482—requisites of a lease, 483—concurrent leases, ib.—reservation in leases, ib.additional rent, 484, ib., n. (r)—as to the provise for re-entry, is.—as to waiving forfeiture, ib., n. (s)—as to usual covenants, ib., & 485—form of lease in proceedings on a vacant possession in ejectment, 485—a general precedent for leases of houses, 486—lease of a farm and lands, 509 miscellaneous forms of leases, 517-indorsement on a lease by way of confirmation thereof, 517—leas for a further term by inderesment, 518

a short form of a lease of a home containing the common and usual covenants, 590—lease of a shop and wave-house, 599—lease of a water corn mil. from husband and wife under a grown power, 586—a concise form of less with a covenant for granting a further term at the expiration of the least with remarks on the covenance, 538 lease of a public house from husban and wife, in which a surety joins with the lessee for payment of rent, &c., \$34—lease of a wife's settled estate for life, in pursuance of a power reserve to her in her marriage settlement, and in which the husband joins as a consenting party, 540—lease of a cottage and land from husband and wife for ninety-nine years, determinable on the leath of wife, (she being tenant for bile,) 511 - lease of a farm by a widow under a power, 546—lease of a farm, part free-hold and part copyhold, 5-2—lease of a royalty, 565—lease from a lord of a manor of a fishery, also of hunting and hawking, with an appointment as keeper of the same, 567—leave from tomants in common, 368—least of a house and premises in mortgage, made by mortgager and mortgages, 570 lease by a mortgages having a power of leasing in the mortgage deed, 574 lease of a house and stable for twee one years, with a provise for the determination of the lease of the house at one period, and the stable at another, at the option of the parties, on notice being given for that purpose, 579underlesse with provisions as to indersnifying the leasee, and as to renewal, 581—renewed lease for lives, 585—lease of mines of ore, 601 - lease of coal mines, 606 - observations and cas 627—requisites in making a lease, 627 subject demised, ib. when by deed and setting forth parties, it. over menorment, ib.—the parts of a lease, notes ceremonics, 658 ecom ance by lessee, ib .- construction of, ib--where words are emitted. ib.—the word "term" in a lease, ib memo randums in Icases, ib.—terms of los duration, how construed, 699-pa evidence, ib.—expired lease, ib.—purel demise, 631—connocucement and deration, ib.—outgoing tenant's right es to way going crop, ib.—optional numbers. ber of years, 639—pressines, 639—for lives, 634—void lease, 636 firmation of lease, ib.—catoppel, 6 n. (r)—on leases by particular persons, 637—by tenants for life, id.—tenants in tall, id.—fame covert, id.—lunctics, id. -joint tenants, tenants in comm

and co-parceners, ib. mortgagees, ib. copyholders, ib.—executors, ib.—guardians, ib.—ecclesiastics, ib.—aliens, ib.—trustees of charities, 638—leases made under powers, ib.—assignees, leases under statute 13 Eliz., c. 10, and 32 H. VIII., c. 28, ib -by wardens and poor of an hospital, ib —the effect of a lease by a mortgagee and the executors of mortgagor, ib.—lease by agent, 639latches of tenant, ib.—as to covenant for renewal, ib.—promise of renewal by letter, ib.—as to perpetual renewal, ib.—agent's responsibility, ib., n. (a)—as to renewal of chief leases without surrendering underleases, ib., n. (b)latches as to renewal, ib .- performance of covenant for renewal, 640—as to covenants to repair, ib.—breach of covenant, ib.—as to repairs of walls, 641repairs to house, ib —as to repairs in building lease, ib .- in repairing lease, ib.—as to commencement of action for breaches, ib.—covenants express as to husbandry, ib.—expending dung on premises, 642—consuming hay on premises, ib -manure, ib. -as to in-coming tenant, 643—as to sowing land, ib. covenants implied as to husbandry, ib.—tillage, ib.—manuring land, ib., n. (w) special covenants not to be implied, 644—injunction restraining tenant from doing damage, ib.—custom-ary usage, ib.—management of premises, ib.—cultivation, ib.—as to hay and straw, ib., n. (w)—as to tillage and improvements, 645—as to agreement to manage upon the same terms as prior tenants. ib.—usage, ib.—spending manure on premises, ib., n.(z)—custom of country. ib., n.(b)—as to right of out-gone tenant, 646—as to preservation of boundaries, ib. -sufferance of tenant to exercise acts of ownership, ib.—as to tenant permitting waste, ib., $n \cdot (e)$ —bills in equity as to boundaries, ib., n. (f)—as to commission to ascertain boundaries, ib, n. (f)—tables of the value of leaseholds and reversions, 647-649

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Leasehold—agreement for purchase, 116—for an assignment of leasehold for lives, 120—observations on the requisite stipulations in purchasing leaseholds for lives, 121—table of the value of estates or annuities to make certain

rates per cent., 647 Lessee—liability of a lessee, 196—bank-

ruptcy of lessee, 198
Lessor's Title—as to production of, 42, 60, n. (o), 116, n. (x), 120, 265, n. (b)—on the title generally, 432—the reason why the lessor's title should be produced, 265, n (b)

Letter—as to agreements by, 119, 639

L-tters of Attorney—clause in an assignment of a policy of insurance, 192 letter of attorney to enter on a vacant possession, 650—letter of attorney to demand and receive rents, 651—by an administratrix, ib, n. (2)—letter of attorney to distrain, 654—to demand rent, and in default to re-enter, 655

License—from mortgagee to mortgagor to grant building leases, 93—licenses to demise and assign, 656—from landlord to assign to a particular person, ib.—to a copyholder, ib.—when not restricted to a particular person, ib.—from a landlord to a tenant to exercise a trade restricted in a lease, 657, 661—observations and cases, 659—explanation of license, ib.—reason for inserting the provise of restraint, ib.—when the proviso ceases, ib.—as to an administratrix, 660-effect of underlease, ib.lodgings, ib.—contract to assign, ib.advertisement to let, ib .- deposit of lease, ib.—as to license by a lord of a manor, 611

Life—of estates for life, 5—as to sur-render of estates for life, ib., n. (u)

Lights—lessee not to obstruct window lights of adjoining houses, 94

Lime—as to manuring with, 73

Limitation—of time for bringing an ejectment according to the act 3 & 4 W. IV, 6. 27. 432, n. (p)

Limited Costs—as to distress under £20., 323—schedule to the act 57 G. III., **c.** 93. 323

Liquidated Damages—as to penalty in agreements, 98, n. (o)

Livery of Seizin—to termor, 14, n. (k)Lives agreement for the assignment of a lease for lives, 120—remarks on preparing, 121—assignment of a lease for lives, 171 - mode of conveying, ib, n. —lease for lives renewable, 586

Lodgings—as to agreements for, 33what are lodgings, ib.—how let, ib. when furnished, ib.—terms to be un-derstood to avoid disputes, ib.—rent and notice to quit, ib.—periods of taking, ib.—custom as to notice to quit, ib. when premises are divided, ib., n. (i) payment of rents, 34—what inquiries should be made on taking lodgings, ib. as to the agreement being injurious to public morality, ib.—illegal entry of landlord, ib—as to abandonment by lodger, ib .- the statute of frauds as to lodgings, ib .- stealing from lodgings, 37, n. (r)—notice to quit lodgings, 671

London—as to partition walls of houses within the bills of mortality, 108, n. (s) Lord of a Manor—as to surrendering copyhold premises, 11—as to fees payable on admission of copyhold, 12, n. (b)-lease from a lord of a manor of a

3 S fishery, also of hawking and hunting, with an appointment as keeper of the game, 565—lease of a royalty of hunting, hawking, fishing, and fowling, appertaining to a manor, 566

Lunatic-committee of, may make leases,

637

Machinery—agreement for letting machinery with mill, 65—when in use not distrainable, 343

Manor—fees payable to lord of manor, 12—license to demise by a lord, 666

Manure—stipulation to manure lands, 59, 72—as to expending on premises, 612, n. (q), 613

Marl-stipulation in an agreement for

lease for tenant to dig, 60

Marriage—the effect of, as to dower and curtesy, 7, 8—as to the marriage, ib., n.(p)—of a (woman) tenant in recovering of rent from the husband, 150

Memorandum-forms subjoined to conditions of sale, 280—directions as to, ib., n. (g)—cases decided respecting, 282

Mesne Profits—evidence under the statute 1 G. IV., c. 87, for mesne profits, 415—proceedings by action for, in ejectment generally, 437

Michaelmas—construction of lease as to commencement, whether old Michael-

mas or new Michaelmas, 631

Mills-agreement for letting, 65-habendum in the lease of a water corn

mill, 468

Minea—conditions for a lease of, with divers stipulations forming the summary of a lease, 79—exception in a lease of mines, 443—habendum in a lease of mines, 469—lease of mines of ore, 601--lease of coal mines and clay pits, 606

Miscellaneous-forms of agreement between landlord and tenant, 61—assign-

ments, 169—of leases, 517

Money—consideration in a lease, 317

Mortgage—mode of assignment of policy when by way of mortgage, 193—lease of premises in mortgage, 570—lease from a mortgagee having a power of leasing in the mortgage deed, 574

Mortgagee—license from mortgagee to mortgagor to grant leases, 93—distress

by, 541-lease from mortgages and

mortgagor, 570

Mortgagor-as to the estate of the mortgagor after default in payment, 93 Mutual Releases—as to general mutual releases in awards, 217

Non-compliance—as to contract for purchase of leasehold premises, 279

Notice—of owner's intention to apply to justices to recover possession under the act 1 & 2 Vict., c. 72, 422

Notice to Let—covenant to permit land-

lord to affix notice six months previous to expiration of term, 294

Notice to Appear—at the foot of declaretions in ejectment, 376, 378, 388, 361,

Notice to Quit—when upon continguity, 149—as to double rent upon s holding over, ib.—form of notice by a landlord to a tenant to quit, 602tice to quit when necessary, it., a.—length of notice, 664—by when to be given, ib.—when two or more interested in the premises, ib.—respecting joint tenants and tenants in common, 664, 666-on whom the service should be made, 665—as to the original ten and under-tenant, ib .- as to the form of notice, ib.—when verbal, ib.—as to the description of premises, 666—as to the expiration of notice, id.—usual periods of giving notice, 667—as to service of notice, ib.—waiver of notice by landlord, 668-effect in evidence, ik another form of notice to quit to a te-nant, 660—form of notice by tenant of his intention of quitting, ib.—notice of tenant's intention of quitting pursuant to provise in a lease, is.—common form of notice of tenant's intention to qu 670—notice to a tenant to quit where the commencement of the tenancy is uncertain, 670, 679—another form, iA. notice to quit to a tenant at will, 671notice to joint tenants or tenants in common, it -notice by agent of landlord, ib.—notice to give up personnion to a third person, ib.—a general form of notice to quit, ib. —to quit lodgings, ib. miscellaneous forms of notice to quit,673 to quit, or pay double rent or value, ib. to quit lodgings or pay double rent, it. notice to repair, 674, 675—notice to pay rent to prevent forfaiture, 678—notice by a mortgages to a tenant to pay rent in setisfaction of interest, is. -notice to be affixed on premises pursuant to 11 G. II., c. 19, a. 16, with magistrate's proceedings, 677—form of demand of premises according to 1 G. IV., c. 87—notice by landlerd to tenant pursuant to statute 1 & 2 Vict., a. 72. 660—notice by landlord to a sheriff

of rent being due, 631
Noxious Trade—stipulation against, in an agreement for a lease, 53—in lease, 494. (See Leases and Provinces.)

Obligations—236-256 Obliger—meaning of, 258 Obligor—meaning of, 258

Observations—on agreements, 127apportionment of rent, 147—on assiments, 194—on bonda, 258—on cos tions of sale, 276—on covenants, 306 on distress for rent, 340-on ejectme 408—on exceptions, 451—on grants, 461

on habendums, 477—on leases, 626on licenses to assign, &c., 659-on reddendums, 700

Occupation—conditions of sale as to an

occupation lease, 264, n. (a)

Occupancy—as to the estate pur swire vie, 6, n. (c)—as to the set 1 Vict., c. 23. 7

Orchard. (See fruit Trees.) Ouster—as to, in ejectment, 362

Painting - covenant between landlord and tenant as to painting house, 490

Parol Agreement—the meaning of, 30, 50,

n. (c)

Parol Demise-proof of agreement, 427 Parol Evidence—no parol evidence admissible to explain agreement for lease, 41—as to a parol demise for more than three years, 629, 631—as to repairs by lessee, 631

Parceners—tenancy in, 12—at common law, ib.—by custom, ib.

Partition—on division by joint tenants, &c., 13—agreement for, 111

Partition Walls—the building act as to, 108, n.(*)

Particular Estates—the nature of, 14 Pasture—stipulation to lay down fields for, 71, n. (x)

Pasturage—for cows, 123

Penalty-in agreements, 72-as to the insertion of the penal clause in agree-

ments, 98, n. (o)
Perpetuity—formerly of estates tail, 3 Personal Covenant—the nature of, 307 Personal Representations—when bound,

Petit Serjeantry—ancient tenure by, 1, n.

grant of, 459 - observations on, Pew 465

Pillenage—ancient tenure by, 1, n.

Planting—exception in a lease of, land for planting, 442, 504

es to production and admission of evidence, pursuant to the general rule of the courts after plea pleaded, 433

Ploughbote—5, n. (x)
Ploughing Lands—stipulation in agreement in respect to, 68, n.—for landlord to enter and plough preceeding the determination of the term, 550 Possession—when tenant is let into pos-

session under an agreement for a lease, 49— landlord's right to take, 408

Pound—as to distress, 350

Power—exercise of, by man and wife of a joint power in lease, 526—by a wife in pursuance of a reservation in her settlement, 540

Premises—when divided, 33

Prescription — distress by, 317, n. (e)-prescription as to ways, 463—as pews, 465

Proceedings—in ejectment, 363

Production of Lease-covenant, 171, n.

(f)—903 Provisoes—for re-entry, 484, 505, 524, 527, 538, 682—for sooner determination generally, 501, 523, 552, n. (w)—for determining a lease on the representatives of lessee, giving three calendar months' notice to lessor, 534, 580—in a mining lease, that no part of large coal shall be converted into coke, 614—to convert into coke such coals as are customary ib.—for suspension of royalties during stoppage by fire, 615—power of dis-tress in a mining lease, 616—power for lessee to abandon mines on notice, 619 provisoes generally, 682—cases as to, ib., n. (e)—for determining leases, and against assigning, 682-688

Public House — covenant in an assignment of lease to indemnify assignee from eviction on account of breaches of covenant in lease, 296—lease of a public house, 534—covenant not to convert public house into a private

house, 538, n. (f)

Pur autre vic-estate by, 6- as to leases, 481

Qualified Covenants—as.to, 309 Quiet Enjoyment—covenant for, in lease, 500

Quitting—stipulation as to tenant quitting farm, 59, 68, n.(g), 75

Rates—covenant as to payment of rates and taxes in a lease, 488

Real Action—on the nature of, 369

Real Covenant, 306

Re-building-covenant as to the application of insurance money, 492

Receipt—as to, in respect to time of tenants holding, 499

Receiver—distress by, 341—as to ejectment when a receiver is in possession, 435, n (g)—notice by a receiver to the

sheriff as to rent due for premises, 681 Recital—of a lease, 140, 163, 169, 172, 238-of a sale by auction of a lease, ib. of an assignment of lease, 141-of the terms of conditions of sale, ib.an intended indemnity in regard to rent on apportionment, ib .- that by divers mesne assignments, 163—of agreement for contract for sale of leaseholds, 164—of a lease for lives, 172-of disputes depending, 175-of a trust deed of leasehold property, 180of power to appoint new trustees, 189—of a policy of insurance, 191—of contract for the sale of timber, 218—of being in possession as tenant, 221—of a verbal agreement for a lease, ib. of tenant being indebted to landlord, 227, 230 — of rent being due, 229 — of distress being made, ib.—of appraisement and valuation, ib.—of goods remaining unreplexied, ib. - of agreement for sale of goods, 230—of an indenture of assignment, 240—of an intended ejectment, 245—of an outstand. ing term, ib.—how far recitals in the condition of an indemnity bond restrain the responsibility, &c., 246-recital in lease by mortgagor and mort-gagee, 570—recital of the surrender of lease to obtain renewal, 587-recital of the perpetual renewal of lease, 689-of renewal at the accustomed times, ib.of lessor becoming party to assignment, ib.—of renewable lease for lives, ib. the use of recitals, ib., n. (A)—recital of assignment with consent of lessor, 690—of assignment of lease, ib.—of mesne assignments, ib.—of license to assign, 691—of a lease for a term of years, ib .- of a contract for lease when mortgages joins, ib. — of a license to demise copyhold, 692

Recognizance—as to recognizance under the stat. 1 W. 1V., c. 70. 414, 415, n. (i)

of bail in ejectment, 693

Recovery—of possession of tenements, under the act 1 & 2 Vict., c. 72. 418

Recoveries—how introduced, ib.—powers of disposition under the act for abolishing recoveries, 4 - in what cases a recovery was usually resorted to, 4 n. (o) time after which no recovery could be suffered according to the act, 4 n. (p)

Reference.—(See Arbitration.)

Reddendums—in the lease of a house, 487—general form of, in a farming lease, 504—in a lease by tenant for life under a power, 540,566—in a lease of land, part freehold and part copyhold, 553three reddendums in a lease of rent as to different parts, 559—in a lease from tenant in tail, 561—in a lease from tenant for life and remainder man, 562in the lease of a royalty, 565, 567—in a lease from tenants in common,560—in a lease from mortgagur and mortgagee, 570—in a lease by mortgagee under a power, 575—reddendums in the lease of a house and stable, determinable at the option of the parties, at different periods, in respect to parts of the premises, 579—in an underlease, 582—in a renewed lease for lives, 588-in a lease of different premises, 593—in building leases, 594, 597, 600—in leases of mines, 603, 611-613 — reddendums generally, 694—forms of, ib.—observations, 700

Re-entry-stipulation for in an agreement for lease, 52—ejectment for breach of proviso, 430—mode of proceeding, ib. as to a proviso for a re-entry, 686—

(And see Provisoes.)
Release—as to mutual releases in awards. 217-release to trusters assigning, 186 release by a landlord to a tenant of rent reserved by a lease, 703-release

by a landlord of a right of entry. 704 release between a landlord and tenant as to an agreement for lease, 705-release of the inheritance from landere to tenant, 709

Re-letting—by landlord, 128 Remainder—the meaning of, 14

Remainders—the nature of, 14—vested, ib. — how distinguished, ib. — contingent, lo-distinction between a vested and a contingent remainder, id.—examples, ib., n. (52), (2)

Removal—fraudulent removal of goods,

321

Renewal—stipulation for renewal of lives in case of death of *criles que vies*, 121 Renewed Lease for Lives, 586

Repairs—as to the performance of, 70, n. (s), 71, n. (t)—forfeiture by latches or breaches of tevant, 587, 639—promise

by letters for renewal to an assignee not good, 639, n. (c)—construction of corenant for perpetual renewal, 640

Rent-payment of, under an agreement for lease, constitutes a tenancy from year to year, 69, n. (r)—what a net rent is, 147—when rent goes to the heir, ib.—when to the executor, ib.how released, ib.—as to parol evidence showing time of payment of, 148—on death of tenant for life, ib.—as to action when not sufficient distress, ib.—as to actions for rent, ib. -double rent, 149when not liable, ib.—where the statute 11 G. II. applies, ib.—where the statute 4 G. II., c. 28, does not apply, ib.—as to recovery in debt, ib., 150—bond by tenant and his surety for securing rent, 238—covenant to pay rent and taxes, 481—scale of rents for arable land, 700—notice to pay, 676

Rent (fee farm)—grant of a fee farm

rent, 457

Bent Charge-what, 147-grant of, by tenant for life and remainder man, 148

-as to the clause in agreement for leases in regard to repairs, 41-by yearly rent, 71—repairs by yearly to nant, 129—covenant as to repairs, 400 as to covenants in leases for repairs, 640—notices as to, 674, 675

Replevin Bond—form of, 237—assignment of, 238, n. (i)
Replevy—as to replevying distress, 337—proceedings, 338—observations and cases in replevin, 353—removal of the action, 354—as to replevin bond, ib. parties in proceedings against sheriff, ib.—as to inquiry into sufficiency of sureties, 355—as to assignment of bond, 356—forfeiture of bond, 357—proceedings by assignee, 358-liability of sureties, 359

Representatives — personal representa-

J

tives, bound, although not named, 31

Reservations—in an agreement for a lease of timber, &c., 58, n. (1)—in the conditions for a lease of mines, 79—timber and game, 70—bond for securing reserved rent, 240

Restitution—of goods in replevin by

sheriff, 338

Reversion—the nature of, 15—the difference between a remainder and a reversion, 10,

Reversioner — in respect to underleases, 480, 481

Right of Entry—party bringing ejectment must have, 361

Right of Way—grant of, 466—on ways, 441

Road—grant of, 454 Room—agreement fo

Room—agreement for letting, 37 Royalty—lease of, 565

Rule—as to showing cause why judgment, &c., 21

Schedule—to an agreement for letting a farm, 76—to an attornment of tenants, 204. (See Leases.)

Seal—agreement under, 30, n. (w)

Servants—stipulation in an agreement for lease for off going tenant to have room for lodging, 60

Service of Notice to Quit—mode of, 667

Shop—lease of, 623

Signature—to agreements, 31, 119

Specific Performance—as to, 32

Stable--lease of, 579

Steward - agreement between landlord and steward, 87—as to notice to quit,

Stipulations—in agreements, 29—usual stipulations in agreements, 30—in a lease of a house, 49—for an agricultural

lease, 50, n. (b)

Statutes — 13 Ed. I., c. 1. 3 — 51

Hen. III., stat. 4. 319—4 Hen. VII.,
c. 24. 4—7 Hen. VIII., c. 4. 4—27

Hen. VIII., c. 16. 5—31 Hen. VIII.,
c. 1. 13—39 Hen. VIII. c. 16. 638— 39 Hen. VIII., c. 28. 534, 637, 638

— 32 Hen. VIII., c. 32. 13—32

Hen. VIII., c. 37. 318—34 & 35

Hen. VIII., c. 20. 4—1 & 2 P. & M.,
c. 12. 325, 331—13 Eliz. c. 5, 226—
13 Eliz., c.10. 637—17 Ch. II., c. 7. 326

20 Ch. II. c. 3. 39. 41, 151, 489, 213—9 29 Ch. 11., c. 3. 29, 41, 151, 482, 713—2 W. & M., sess, 1, c. 5. 319-321, 324, 325, 329, 330—8 & 9 W. III., c. 11, 263—9 & 10 W. III., c. 15. 205—9 & 10 W. III., c. 31. 13—3 & 4 Anne, c. 18. 13 4 Anne, c. 16. 200—7 Anne, c. 18. 13—8 Anne, c. 14. 320, 329—4 Geo. II., c. 28. 19, 136, 149, 318, 363, 411, 639, 665, 673—7 Geo, II., c. 20. 365—11 Geo. II., c. 19. 136, 149, 196, 200, 238, 319, 320, 321, 324, 329, 330, 332, 366, 408, 440, 677—14 Geo. II., c. 17. 6—24 Geo. II., c. 13. 196 — 5 Geo. III., c. 17. 636 — 14 Geo. III., e. 78. 106, 108, 314—19 Geo. III., c. 56. 269, 281 — 28 Geo. III., Geo. 111., c. 36. 209, 261 - 26 Geo. 111., c. 98. 150 - 49 Geo. III., c. 121. 153 - 55 Geo. III., c. 184, 151, 217, 332 - 66 Geo. III., c. 50. 310 - 57 Geo. III., c. 52. 408, 677 - 57 Geo. III., c. 93. 323 - 57 Geo. III., c. 19. 638 - 59 Geo. III., c. 12. 411 - 1 Geo. IV., c. \$7. \$1, 23, 368. 379, 412, 415, 437, 693 - 6 Geo. IV. c. 12. 411—1 Geo. IV., c. \$7. \$1, 23, 368, 379, 412, 415, 437, 693—6 Geo. IV., c.16. 153, 190—7 & 8 Geo. IV., c.17. 323—7 & 8 Geo. IV., c. 29. 37—1 W. IV., c. 65. 637—1 W. IV., c. 70. 24, 371, 380, 381, 412, 416—2 & 3 W. IV., c. 71. 463—3 & 4 W. IV., c. 27. 13, 317, 362, 432—3 & 4 W. IV., c, 42, 206, 263, 318, 329—3 & 4 W. IV., c, 74. 4, 179—4 W. IV., c. 22. 137—5 & 6 W. IV., c. 59. 325—1 Vict., c. 2. 3—1 Vict., c. 26, 2. 11—1 & 2 Vict., c. 72. 418 2, 11—1 & 2 Vict., c. 72, 418

Submission to Arbitration—affidavit of

due execution of, 26

Sufferance—tenant by, 10

Surety-liabilities of sureties in a bond, 260—when obligor becomes bankrupt, 231—liability of surety under a composition deed, 261-when time given by principal, ib.—co-sureties in a bond, 262—contribution of sureties, ib.—the effect of a release to the principal debtor, ib.—surety in lease, 492

Surrender—of copyhold property, 11, 12—as to expense of a purchase, 117, n. -surrender by a lessee of his term, 712-surrender of a lease for lives (one of the lives being dead) in order to obtain a renewal, 713

Tables—of the value of leaseholds and reversions, 647-649

Taxes—covenant by lessor to pay and to indemnify lessee, 525 and note. (See Forms of Lesses.)

Tenancy—as to determination of tenancy, 426—notice to quit where the com-mencement of a tenancy is uncertain,

Tenant—definition of a tenant, 1—how a tenant holds, 1, n. (b)

Tenant by Copy of court Roll-how this estate depends, 11—the main principles, ib .- as to the surrender, ib .- the statute as to the new rules of inherita ance extends to this tenure, ib., n. (s). power given to devise the same by the statute for amending the law of wills, ib., n. (s)—fees to the lord of the manor, 12—estovers, ib., n. (c)

Tenant by Curtesy—the nature of the estate, 8—how the wife must be seized, ib.—on what estates it will arise, ib., n.

(p)—as to seisin necessary to create, ib., n. (r)—his liability, 9

Tenant in Dower—the nature of the estate, 7—how it is understood if the

marriage took place before the operation of the new dower act or after, ib. the objects of the statute, 7, n. (d)sections abstracted, 8

Tenant by Elegit—how created, 10

Tenant for Life—the nature of,5—the incidents annexed, ib.—and to what he is entitled as estovers, ib.—tenancy for life further explained, ib., n. (t) powers of a tenant for life, ib., n (w) when without impeachment of waste, 5, n. (y)—as to the determination of the estate, 6—entitled to emblements, 6, n.

(z)—lease from, 544

Tonant pur autre viothe nature of the estate, 6—the quality of the estate, ib. to whom it may be surrendered, ib.denomination when on one life or more, 6, n. (a)—of the surrender of this estate, and to whom, ib., n. (b)—as to general occupancy originally of this estate, and as altered by statutes, 6, n. (e)—entitled to emblements, 7—as to forfeiture and waste, ib.

Tenant at Sufferance—how it originates. 10-when a constructive tenancy from

year to year by payment of rent, ib.

Tenant in Tail—in fee tail, 2—tail general, ib.—tail special, ib.—tail male general, 2, n. (j)—tail female general, 2, n. (k)—the property originally of a tenant in tail in the estate, prior to the statuto de donis, 3-the perpetuity established afterwards, ib.—tenant in tail after possibility of issue extinct, ib., n. -the operation of the statute de donis, ib.—why the statute could not be repealed, ib., n. (n)—the form of re-covery introduced, 4—as to the statute of 3 & 4 W. IV. for abolishing fines and recoveries, ib.—the deeds of assurance and powers of disposition under the act provided for conveying an estate tail, ib.—persons to whom such power of disposition is not to extend, 4, n. (q)

Tenant at Will-how it originates, 10how understood when rent is paid, it. emblements as to this estate, ib.

Tenant for Years—the nature of the estate, 9—incidents to the tenancy for years, 10

Tenants by Parcenary--at common law, 12—by the custom of Kent, 12

Tenants in Common—the nature of, 13, 14—the operation of a lease by, ib.form of lease from, 568

Tenants in Gavelkind—the nature of, 12

Tenancy (joint)—where it arises, 13 Tenants (generally)—tenant's lia liability for rent where house is burnt down, 41 —as to payment of taxes belonging to landlord, 148, 149. (See "Leases" and "Notices.")

Tenures—of general ancient tenures, 1,

Term—the nature of, 9, n. (f), (w) commencement and duration of term in lease, 631

Testatum Clauses in Leases — common forms in leases, 715-by virtue of an act of parliament, ib. -- by virtue of several acts, 716—in a lease for lives, ib. —another form on adding a fresh life in an underlease, ib.—in a derivative lease, 717—in a lease under a power, ib.—by tenant for life under a power in a settlement, ib .- in a repairing lease, ib.—in a building lease, 718—in a lease from husband and wife under a general power of appointment, ib.—in a lease by a married woman in pursuance of a power reserved to her in her marriage settlement, ib.—
in a mining lease, 719—in a mining lease, by virtue of a power given in the mortgage deed, ib.—
in a lease from devisees in trust, ib. from husband and wife, of land of which they are seized in her right, 720 in a demise of freehold and copyhold, ib,—in a demise by mortgagor and mortgagee, ib.

Testimonium of Agreement, 30, 31 Tillage—covenants as to tillage and im-

provements, 645

Timber—exception of, in an agreement for lease, 58, n. (c)—agreement for the sale of timber, 88—bargain and sale of timber trees, 218—as to the allowance by lessor of timber for repairs, 550

Title—as to the title under the action of

ejectment generally, 432

Trade—covenant by lessee not to exercise certain trades, 494—license to exercise a particular trade restricted by lease, 657—as to such license, 661

Trial-evidence on trial in ejectment between landlord and tenant, 424

Trees—exception of trees in agreement, 61, 70--agreement for sale of timber trees, 88

Trustees—the effect legally of ejectment by trustees against cestui que trust, 432 — assignment of leasehold preparty from old trustees resigning, 180

Umpire—stipulation as to, in an agreement, in case arbitrators cannot agree,

68, n. (q), 97

Underlease—contract for an underlease for building, 100, 104—as to entering into an agreement for an underlesse, 131—difference between an assignment and an underlease, 152—habendums in, 469—underlease with covenants of indemnity, and as to renewal, 581when covenant not to underlet is broken by an underlease, 660

Underlessee—bond to indemnify an underlessee from ground rent, 212

Under-tenant—agreement for letting 16,

77—constructive notice of covenants, i**b.**, n.

Underwood-stipulation for tenant to take, 60

Usual Covenants—what are usual covenants for a lease of a house, 41, n.

Vacant Possession—affidavit for rule for judgment on, 25—ejectment on a vacant possession, 382—letter of attorney to enter, 650

Value—of an estate on purchase, 119 Valuers — appraisement under distress, 336

Valuation—as to valuation in agreements for purchase, 119

as to, 29, 30—stat. of Verbal Agreementfrauds, as to, 41

Verbal notice—to quit, as to, 665

Villenage—ancient tenure by, 1 n.
Voluntary Agreements—as to, 30, n. (w)
Waiver—of notice to quit by landlord, 668

Wardens—as to lease by wardens of an

Wardens—as to lease by wardens of an hospital, 638
Warrant—form of, to peace officers to take and give possession under the stat.
1 & 2 Vict., c. 72. 424
Warrant of Attorney—in ejectment, 405
Water Course—a right of passage for

water is an incorporeal right, 454, n. —(d) liberty of water course for land-lord, 494

Way-grant of a right of way, 444-when in consideration of the extinguishment of another road, 45—kinds of ways, ib. when by grant, ib.—as to carriage ways, ib., n. (h)—ways appurtenant, 462—presumptive grants, 463—ways by prescription, ib.—ways of necessity, 444 estminator—statute of 2

Westminster—statute of, 3

Widow—as to dower, 7—lease from widow under a power, 546 Wife—service of declaration on, 385

Will—tenant at will, 10

Window Lights—lessee not to obstruct in adjoining houses, 94

Words — construction of, in agreements for letting, 43—operative words in leases, 715
Writ of Possession—attornment to save

writ of, 201

Wrongful Distress—as to, 349

Yearly Tenancy—constituted by payment of rent under an agreement from year to year, 69, (r)

Yearly Tenant—underletting the premises may distrain, 340 Years—tenant for, 9







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